TRANSCRIPT OF RECORD
IN FIVE VOLUMES

APR 10 1944
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1943

No. 873

PACIFIC GAS AND ELECTRIC COMPANY,
a corporation,

Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,

Respondent,

VOLUME IV

Pages 1473 to 1670

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Rotary Colorprint, 590 Folsom St., San Francisco

No. 9918

United States

Circuit Court of Appeals

For the Ninth Circuit.

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Upon Petition to Review an Order of the Securities and Exchange Commission.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

(Testimony of James Fogarty.)

him, as a director, the [1482] comments from time to time upon discussions which had taken place at Board meetings.

Q. During that period he was paid a salary of ten or twelve thousand dollars a year by the North American Company? A. That is correct.

Q. Would you say Mr. Earle would never have received any salary had he not been a representative of North American Company on the applicant's Board and on its Executive Committee?

A. No, I would not say that he would not have received any salary. I believe he would have received some compensation because of his——

Q. Simply by reason of the fact he had been formerly associated with the Great Western Power Company of California? A. Yes.

Q. But he was during that period expected by the North American Company to attend Board meetings and keep it advised as to the action of the applicant at those Board meetings? A. Yes.

Q. Who is now performing the same function Mr. Earle performed during his lifetime?

A. Nobody.

Q. Does Mr. Black furnish North American with substantially the same information which was furnished it by Mr. [1483] Earle during his lifetime?

A. Well, Mr. Black has sent on to Mr. Freeman and me the reports that are presented to the Board, which were the reports given to Mr. Earle. But Mr. Black does not accompany those with notes con-

(Testimony of James Fogarty.)

cerning discussion had at the Board meetings, as Mr. Earle frequently did.

Q. In your opinion, is North American Company better informed of the affairs and business of the applicant now than it was during Mr. Earle's lifetime? A. No.

Q. Would you say there was no difference in information received by the North American Company prior to and subsequent to Mr. Earle's death?

A. I would say if there is any difference, that it would be in the absence of the comments formerly made by Mr. Earle with respect to matters discussed at the Board meetings.

Q. I believe you have testified Mr. Black's primary duties during the time he was Vice-president of the North American Company were to look after the North American Company's investment in the Western Power. Is there any other person—is there any one in the North American organization at the present time who is performing the functions which Mr. Black performed during the period 1930 until the time he became president of the applicant?

A. No, there is not. [1484]

Q. Would you say the North American was not keeping in as close touch with the applicant's affairs as it did during Mr. Black's vice-presidency?

A. Mr. Black made a trip every year to California—I believe he did in every year—and discussed matters with the officers of the Pacific Gas and Electric Company probably at greater length than

(Testimony of James Fogarty.)

the few discussions I had with them when I have been out there. And that naturally follows from two causes: One, Mr. Black was an operating man and was familiar with a large part of the territory served by the Pacific Gas & Electric Company through its former Western Power Company's subsidiaries; and, secondly, Mr. Black, as a technically trained man, quite naturally discussed matters which I, a nontechnical man, would not have discussed.

Q. On the occasions of Mr. Black's trips to California during the time he was Vice-president of the North American Company, did he go to California for the purpose of transmitting to Mr. Hockenbeamer or Mr. Downing the views of the North American Company with respect to the applicant's operations and general policies?

A. No, he did not.

Q. What would you say the purpose of his visit there was?

A. Well, as sort of a periodic visit to a property [1485] in which the North American Company had a large interest for the purpose of discussing the affairs of the company generally, as any director might do on the job.

Q. If Mr. Black were not president of the applicant, in your opinion would North American have only two directors on applicant's Board, or would North American be represented thereon by some

(Testimony of James Fogarty.)

person in more or less regular attendance who would report to it as Mr. Earle did?

A. I do not think Mr. Black's presidency has any influence on that situation.

Q. Does Mr. Black advise you of important problems he has to submit to the directors' meetings before the same are submitted?

A. The only one I can recall is the one to which I referred before, and that was the settlement of the Gas Rate litigation.

Q. Do you go over the material which is submitted to you by the applicant?

A. Sometimes, but Mr. Freeman follows those reports more closely than I.

Q. If, in reviewing the same you were apprised of some action by the Board with which you did not agree, what action would you take, Mr. Fogarty?

A. I would express my viewpoint to Mr. Black.

Q. Have you ever done so? [1486]

A. No. There has not been any occasion.

Q. There has never——

A. Except that Gas Rate litigation I referred to before that I can recall.

Q. You never thought it advisable or necessary to object to any action taken by applicant's Board since you were a director?

A. I have not.

Q. Who now performs the function of keeping North American Company advised as to the action of the Executive Committee?

(Testimony of James Fogarty.)

A. We receive minutes of the Executive Committee in New York.

Q. Although you have no representation on that committee? A. No.

Q. And how did it happen you were furnished that information when Mr. Earle ceased to be a member of the Executive Committee?

A. Well, I suppose that the same information that had been furnished to Mr. Earle being sent directly to New York included the minutes of the Executive Committee on which he was a member.

Q. Do you recall whether or not the North American Company made a specific request that it be furnished such [1487] information as it had been receiving during Mr. Earle's lifetime?

A. No, I do not recall any such specific request.

Q. Do you feel, as long as Mr. Black is president of the applicant, North American's representation on the applicant's committee is not necessary?

A. That has no connection with it. My feeling about representation on the applicant's committee is that it would not be helpful to the Pacific Gas and Electric Company to have a member of a small body such as the Executive Committee, which meets as frequently as it does, living at such a distance because he would not be able to attend the meetings and might, on occasion, for that reason interfere with their obtaining a quorum.

Q. Would you assign those as reasons why North

(Testimony of James Fogarty.)

American has not filled the vacancy on the Executive Committee created by Mr. Earle's death?

A. No, I do not believe there were any reasons. I think that that matter just—well, I think the best way to describe it would be to say it just lapsed.

Q. In other words, Mr. Earle's death—the vacancy on that committee resulting by reason of Mr. Earle's death never became a matter of particular concern to the North American Company?

A. No. [1488]

Q. Why was Mr. Black transferred from California to New York City in 1927?

A. It was Mr. Dame's thought that with the operating experience Mr. Black had had, that with the growth of the responsibilities of our organization in New York, he would be a valuable addition to our executive organization.

Q. Do you recall when it was in reference to Mr. Hockenbeamer's death that Mr. Miller first called you?

A. No, except to say that it was quite soon after.

Q. How did you first learn of Mr. Hockenbeamer's death?

A. It is my recollection I read it in the newspapers.

Q. Do you recall any conversation you had over the telephone with Mr. Downing in which he advised you of Mr. Hockenbeamer's death?

A. No, I do not. It is my recollection that I read it in the paper in the morning and that I

(Testimony of James Fogarty.)

waited until some time after twelve o'clock because of the three hours' difference in time, and having discussed the matter with my associates I called Mr. Downing to express to him our sympathy because of Mr. Hockenbeamer's death; but I do not recall Mr. Downing apprised me of it.

Q. Do you recall having discussed with Mr. Downing on the occasion of the telephone call which you did have with him the successor to Mr. Hockenbeamer's position? [1489]

A. Yes. I said to him in substance that he being the No. 2 man, I assumed he would be Mr. Hockenbeamer's successor.

Q. You mean by that, he being the general manager and vice-president?

A. The senior vice-president, that I assumed he would be Mr. Hockenbeamer's successor and if that were so, the North American as a stockholder of the company would feel quite satisfied.

Q. Did you have any subsequent conversations with Mr. Downing regarding his possible selection as Mr. Hockenbeamer's successor? A. No.

Q. Did you have any discussion with your associates prior to the time Mr. Miller called you regarding Mr. Hockenbeamer's successor? A. No.

Q. Would you say——

A. Except that in the discussion which was not a very formal one during the forenoon of the day on which I learned of Mr. Hockenbeamer's death, it is my recollection that I mentioned to Mr. Free-

(Testimony of James Fogarty.)

man, I think—I am not sure about that—to Mr. Black that I assumed they had gone into the assumption Mr. Downing would be Mr. Hockenbeamer's successor.

Q. And neither yourself nor any one associated with [1490] you objected to Mr. Downing's acceptance of Mr. Hockenbeamer's position——

A. No.

Q. —in the event that should be the selection of the Board? A. No.

Q. You had only two telephone conversations with Mr. Miller? A. That is all.

Q. Regarding Mr. Hockenbeamer's successor?

A. Yes, that is right.

Q. Do you know whether or not Mr. Miller talked to Mr. Black on the telephone between those two conversations that you had with him?

A. No. I do not believe he talked to Mr. Black between those conversations because I think the second one was held on the day following that which I had the first one.

Q. At the time of the second conversation, did you in effect tell Mr. Miller he was free to carry on any negotiations with Mr. Black regarding this matter?

A. Yes. In substance I did, because I do recall having told him if the directors of the Pacific Gas and Electric Company wanted Mr. Black as president and Mr. Black wanted to accept the office, that

(Testimony of James Fogarty.)

the North American Company did not feel it should stand in his way. [1491]

Q. After having conveyed that information to Mr. Black, I assume Mr. Black indicated, either then or later, he would accept the position if it were offered.

A. Yes. I believe Mr. Black indicated to me, along about the time of my second conversation with Mr. Miller, that he would like to accept the position.

Q. Did you discuss this matter with Mr. Williams? A. No, I did not.

Q. You had no conversations with Mr. Williams regarding Mr. Hockenbeamer's successor prior to the election of Mr. Black? A. I did not.

Q. How did you first learn of Mr. Black's election to the presidency of the applicant?

A. Before Mr. Black left New York I knew he was going to be President, but the first information I had that he was desired by the Directors for that position was Mr. Miller—was the first of Mr. Miller's two telephone calls.

Q. Did you discuss with Mr. Miller the possibility of Mr. Downing's selection? A. No.

Q. Did any other directors of the applicant talk with you concerning the selection of Mr. Black?

A. No.

Q. Other than Mr. Freeman? [1492]

A. No.

(Testimony of James Fogarty.)

Q. Were there any written communications between you, or any representative of the North American Company, and any representative of the applicant, concerning Mr. Black's election as President?

A. No.

Q. Did you have any conversations with Mr. Black prior to his leaving New York City to accept the presidency of the applicant, regarding his future attitude toward the applicant's largest stockholder? A. No, I did not.

Q. Was there anything said about whether or not he would endeavor to keep North American advised as to the applicant's position and action to be taken in connection therewith?

A. Not that I recall.

Q. Did Mr. Black ever tell you that Mr. Miller had called him and asked him whether or not he would sever all connection with the North American Company and its subsidiaries if he accepted the presidency which was being offered to him?

A. No, I do not recall Mr. Black ever told me that.

Q. Were there any conversations at this time which in any manner dealt with Mr. Black's future attitude toward, or contacts with, North American representatives?

A. Not so far as I can recall. [1493]

Q. Did you feel at that time that Mr. Black, as President of the applicant, would not take any

(Testimony of James Fogarty.)

action on major problems of the applicant without the advice of the North American Company?

A. No, I did not feel that he would seek the advice of North American Company. I assumed that on important matters, Mr. Black would consult with the Board and the officers of the North American Company who were on the Board would consequently know of such matters.

Q. Well, did you expect Mr. Black to seek the advice of the North American directors to a greater extent than Mr. Hockenbeamer had done during Mr. Hockenbeamer's presidency? A. No.

Q. Has he done so?

A. Not that I know of. I do not know the extent to which Mr. Hockenbeamer discussed the matters with Mr. Black or Mr. Dame during his lifetime, so that I would not be able to say that he has advised us of proposed action to a greater or lesser extent.

Q. Did Mr. Black ever lead you to believe that he would seek your advice on matters of major importance before taking the same up with applicant's Board?

A. No, I never discussed that matter with Mr. Black.

Q. Didn't you expect that he would do so in view of [1494] his past association with the North American Company?

A. Well, I did not expect that Mr. Black's attitude would be affected by his past association with

(Testimony of James Fogarty.)

the North American Company. I did assume that Mr. Black would consult with the Board of Directors of the company, and as North American had officers on the Pacific Gas & Electric Company Board, that they would not be excluded.

Q. Was there any understanding between you and Mr. Black as to his future conduct in reference to applicant affairs on matters which North American, the largest stockholder, might be interested in during his presidency of the applicant?

A. No.

Q. Was there any understanding that during Mr. Black's presidency, he would also act as North American's representative in applicant's Board?

A. No.

Q. How frequently have you seen Mr. Black since he became president of the applicant?

A. Perhaps five or six times.

Q. How frequently have you been in California since 1935? A. Four times.

Q. And how frequently has Mr. Black, how often has Mr. Black been in New York since he has been president of [1495] applicant?

A. Well, I can recall only twice.

Q. When did you last see Mr. Black?

A. This past Summer.

Q. When did you last talk with him on the telephone? A. I don't recall.

Q. To what extent have you discussed the present proceeding with Mr. Black?

(Testimony of James Fogarty.)

A. Not at all.

Q. Do you mean that you have never discussed the filing of the application in 1935 and the pendency of the application, at any time since then?

A. No, I do not mean that. I was thinking more in terms of this present hearing, and I have not discussed the present hearing with Mr. Black. Undoubtedly, although I do not recall specific instances, or the subject of the conversation, undoubtedly, since the time the Pacific Gas & Electric Company filed its application, I have talked about the matter with Mr. Black, because I have seen him.

Q. Did you have a telephone conversation with Mr. Black along in the Summer of this year regarding the Hetch-Hetchy situation?

A. Yes, I do not recall just when it took place, but I did.

Q. What was the substance of the conversation, [1496] that occurred at that time?

A. When the matter or the question of the difficulty that Pacific Gas & Electric Company was likely to encounter as a result of Secretary Ickes' decision, I called Mr. Black and asked him the status of the matter, and there were a number of newspaper articles about it, and at that time he said that they were studying the matter, and were hoping to develop some kind of a plan that would be acceptable to Secretary Ickes.

Q. Have you talked with him since regarding that subject?

(Testimony of James Fogarty.)

A. I believe I have talked with him since the plan for the lease of the Pacific Gas & Electric Company properties has been developed.

Q. Do any other members of the North American organization talk to any representatives of the applicant over the 'phone?

A. I cannot think of any occasion.

Q. Have you ever talked over the telephone to any one in the applicant's organization other than Mr. Black?

A. Yes, I believe I called Mr. Black in connection with the Hetch-Hetchy matter, and it is my recollection that he was not there and I talked to Mr. Coghlan about it, asked him what the status of it was. [1497]

Q. What other members of North American's organization visit applicant's properties?

A. None that I know of.

Q. Do you know of no occasion on which your engineers or other experts viewed North American's properties in the last five years?

Mr. Phleger: You mean Pacific Gas & Electric?

Miss Calkin: Yes, applicant's properties.

A. No, I don't know of any such occasion.

By Miss Calkin:

Q. How frequently have representatives of the applicant been in New York to confer with North American people?

(Testimony of James Fogarty.)

A. Oh, I do not recall any time that they have been here for the purpose of conferring with North American people. In the course of the last couple of years, Mr. Black has been in New York twice, so far as I can recall, and Mr. Downing, I believe, has been in New York once, and I believe Mr. Coghlan has been in New York once.

Q. Did you ever discuss applicant's affairs with Mr. Wishon in New York?

A. No, I don't recall that Mr. Wishon has been in New York since the Western Power properties were turned over to the Pacific Gas & Electric Company.

Q. Are there any post contacts between North American Company and any other substantial stockholder of the [1498] applicant? Are you acquainted with the twenty largest stockholders of the applicant? Do you know who they are?

A. No, I know the name of some of the larger stockholders, but I am not familiar with the names of the twenty largest.

Q. Does the North American Company have any investment in the Sun Life Assurance Company of Canada? A. No, it has not.

Q. Do you know whether or not Sun Life Assurance Company holds any substantial amount of securities of the North American Company?

A. I think Sun Life owns North American common stock, but without referring to our stock lists,

(Testimony of James Fogarty.)

I couldn't say how much, and I believe it also owns bonds of our operating subsidiary companies.

Q. Do you know whether that company is one of the twenty largest stockholders of the North American Company?

A. The North American Company?

Q. Yes, whether or not the Sun Life Assurance Company——

A. No, I could not say without referring to our records.

Q. Mr. Fogarty, I hand you applicant's exhibit No. 20, which is a list of the largest stockholders of three classes of applicant's stock, and I will ask you to examine those and point out any companies which you know of as either [1499] having large holdings of the North American Company securities, or in which the North American Company has substantial interest (handing witness the exhibit)?

A. I believe the Sun Life Assurance Company of Canada has some North American common stock, but as I stated before, I do not know how much.

I believe Wonham, Albert & Company were North American stockholders for some considerable time, but I cannot say whether they are now or not.

Mr. Phleger: What are they, a brokerage house?

The Witness: No, I believe they are nominee for some foreign holdings.

The Examiner: Do they hold a substantial amount of North American securities?

(Testimony of James Fogarty.)

The Witness: Well, it may have been five or ten thousand shares of North American common stock, but whether they are stockholders now or not, or what their holdings were at that time, I could not say accurately.

A. (continuing) Noxid is nominee for North American stock.

I believe American Cities Power & Light Corporation is a large stockholder of the North American Company.

I am not sure whether Electrical Securities Corporation is a stockholder of the North American Company [1500] or not, but I believe the General Electric Employees Securities Corporation is a North American stockholder.

By Miss Calkin:

Q. To your knowledge, does the North American Company hold any interest in any of the companies that you have just mentioned as being stockholders of the North American Company?

A. No, the North American Company is not a stockholder of, and does not hold any interest in, the companies to which I have referred.

Q. Is there any understanding that you know of between the North American Company and any of the stockholders which you have just pointed out, as to the voting of their holdings, respective holdings, in the applicant? A. No.

Q. Have you, or to your knowledge has any representative of the North American Company had

(Testimony of James Fogarty.)

any discussions with reference to the management and policy of the applicant with any representatives of those stockholders that you have referred to in your previous answer? A. No.

Mr. Phleger: May I just ask, in response to that question, do you know if they had any conversations, you say no. You would know had they had any such conversations; wouldn't you?

The Witness: Yes, if the North American Company [1501] had any conversations with anybody else concerning voting of their holdings of Pacific Gas & Electric Company, I think I would know about it.

Mr. Phleger: Yes, so that your answer is that there have been no such conversations.

The Witness: That's right.

The Examiner: We will recess until 2:15.

(Whereupon, at 1:15 o'clock p. m., recess was taken until 2:15 o'clock, p. m.) [1502]

Afternoon Session

(The hearing was resumed pursuant to recess.)

2:30 P. M.

The Examiner: The hearing will resume.

Whereupon

JAMES F. FOGARTY

resumed the witness stand and testified further as follows:

(Testimony of James Fogarty.)

Cross Examination

(continued)

By Miss Calkin:

Q. Mr. Fogarty, does any one in the North American organization other than yourself and Mr. Freeman examine or review the material sent by the applicant to the North American Company?

A. Yes. I believe that those reports are looked over from time to time by some of the people in our Statistical Department.

Q. What action, if any, has been taken upon the information that you have received from those reports since 1930—I mean, what is the customary procedure in reference to the action of those reports after they are received?

A. They are put in our files. No action is taken. On occasion the question has been asked if the reports indicate a shortage of water or, I believe, on one occasion, Mr. Freeman, who looks over the reports, asked about the cash position of the company.

[1503]

Q. Have you ever requested the applicant to furnish any information which has been refused?

A. No. I do not recall any instance of asking for such information.

Q. Would you describe the difference, if there is any, in the reports now received by North American and those received during the time Mr. Hockenbeamer was president other than the comments of the minutes which Mr. Earle sent?

(Testimony of James Fogarty.)

A. I could not say whether there is any difference in the form of those reports. At that time I did not file them.

Q. Have you ever written any letters to Mr. Black or Mr. Hockenbeamer regarding information which you received upon an examination of the reports?

A. Not I, that I recall, but, as I said before, I think Mr. Freeman has made inquiry from time to time.

Q. How frequently have you or any representatives of the North American Company made recommendations to the applicant concerning its affairs, based upon information contained in these reports? A. None that I recall.

Q. Then, it is not customary for you to make recommendations to the applicant regarding its business? A. No, it is not.

Q. Have you ever criticised Mr. Black or Mr. Hockenbeamer for refusing to follow any suggestions of any nature [1504] made by yourself or other members of the North American organization?

A. The only instance of which I can think was the one to which I referred earlier when the dividend was reduced.

Q. And that was not handled personally by you?

A. No.

(Testimony of James Fogarty.)

Q. Has there ever been any major difference of opinion between the North American Company and the applicant as to matters pertaining to the applicant's business other than the dividend question?

A. None that I recall.

Q. Do you expect any recommendations or suggestions which you might make to Mr. Black in regard to applicant's affairs to be followed?

A. Well, if we felt there was any occasion to make any recommendations, we would feel they should be considered. Whether or not they would be followed is a matter to be decided by the directors.

Q. What action would you take if you knew Mr. Black was about to recommend to the Board action on the part of the applicant which, in your opinion, would be extremely detrimental to the interests of the North American Company?

A. I think we would inquire into the reasons for it first, and if we felt that it was not in the interests of the company, we might raise the question and have it brought [1505] before the Board or the Executive Committee.

Mr. Phleger: By "Company", you mean Pacific Gas and Electric Company?

The Witness: Pacific Gas and Electric Company.

The Examiner: Would you read that answer? I don't think I got it quite clearly.

(Answer read.)

(Testimony of James Fogarty.)

By Miss Calkin:

Q. What would you do to raise the question?

A. It is a little difficult to answer a hypothetical question. I think it would depend upon the particular circumstance.

Q. Would it be probable that you would communicate your views to Mr. Black or that you would attend a Board meeting and take the matter up in a Board meeting?

A. Well, if such an occasion as you describe were to arise, we would present our views to Mr. Black. Whether or not we would attend a Board meeting would depend on the particular circumstance or the possibility of Mr. Freeman or I going to California to attend a meeting.

Q. Mr. Fogarty, I hand you what has been marked for purposes of identification Commission's Exhibits Nos. 138 to 140, inclusive, and will ask you if you can identify those documents. (Counsel hands documents to witness for examination.)

[1506]

A. (Witness examines documents.) Yes, this is my signature. I do not at the moment recall the circumstances of this correspondence.

Q. In your opinion, are those documents true and correct copies of telegrams which were exchanged between yourself and Mr. Hockenbeamer?

A. I have no reason for believing they are not. I would say that is a photostatic copy of a letter and these are typewritten copies of telegrams.

Q. If they were copies of documents which I

(Testimony of James Fogarty.)

took from the files of the North American Company, it would be your best judgment that they would be true and correct copies of documents which they purport to represent and were exchanged between yourself and Mr. Hockenbeamer?

A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits 138 to 140, inclusive.

The Examiner: They will be received in evidence and marked as Commission's Exhibit 138, without objection, which is a photostat of a telegram dated November 19, 1934, J. F. Fogarty to A. F. Hockenbeamer.

(The document referred to was received in evidence and marked Commission's Exhibit No. 138.)

The Examiner: As Exhibit No. 139, copy of telegram of November 19, 1934, from A. F. Hockenbeamer to J. F. Fogarty. [1507]

(The document referred to was received in evidence and marked Commission's Exhibit 139.)

The Examiner: And as Exhibit No. 140, a photostat of letter on the letterhead of North American Company to A. F. Hockenbeamer, President of Pacific Gas and Electric Company signed J. F. Fogarty, President.

(The document referred to was received in evidence and marked Commission's Exhibit No. 140.)

(Testimony of James Fogarty.)

By Miss Calkin:

Q. As President of the North American Company, would you have insisted that the service mentioned in your telegram be arranged for if Mr. Hockenbeamer had been of the opinion such service had not been advisable?

A. I have no recollection of the information contained in the telegram, but if there were something Mr. Hockenbeamer had deemed inadvisable, we would not have insisted upon it.

Q. Do you feel that in view of the fact that North American is applicant's largest stockholder, that any recommendation or suggestion made by you should be given greater consideration than that made by any other stockholder?

A. No, not on the basis of size of our stockholdings.

Q. Do you feel it should be given any greater consideration on any other basis? [1508]

A. No. But I do feel that any suggestion that we would make Pacific Gas and Electric Company, if any, would be based on what we regarded sound reasons and should have the consideration of the Company.

Q. Has applicant ever submitted a draft of its budget to the North American Company before the same was submitted and approved by its Board?

A. No, not as far as I know.

(Testimony of James Fogarty.)

Q. Does North American have no knowledge as to applicant's contemplated expenditures which would be set forth in its annual budget?

A. Well, when the construction program for—when future construction programs have been decided upon by the Board and they are covered by the reports, they are sent to New York as indicated in the schedule which you showed me this morning, we would have that kind of advance information because the construction budgets cover the period of time ahead of the time they are adopted.

Q. But other than the information contained in the reports, typical copies of which are included in applicant's Exhibit 33, you have no knowledge of the budget? A. No.

Q. Do the subsidiaries of North American submit to it their proposed budget? A. They do.

[1509]

Q. Does Mr. Black consult you or any other North American representative before making any substantial expenditures not included in applicant's budget? A. No.

Q. Does North American approve or in any manner act upon requisitions for expenditures of the applicant? A. No.

Q. Does it do so with respect to its subsidiaries?

A. After the budgets are approved—after the budgets of our subsidiary companies are approved, the expenditures from time to time are followed by members of the North American organization

(Testimony of James Fogarty.)

which is not the case of the Pacific Gas and Electric Company.

Q. Have there been occasions on which Mr. Hockenbeamer or Mr. Black have consulted with representatives of North American with reference to the advisability of applicant making a major improvement in its property? A. No.

Q. Is North American advised as to all large construction jobs before the same are commenced by the applicant?

A. Only to the extent that we have knowledge of it in the reports that are made and adopted by the Board of Directors, which naturally contemplate extensions to be made thereafter.

Q. Have you ever told Mr. Black that North American [1510] should be advised of any improvement which involved a large expenditure of money before the same was finally determined upon?

A. I have not.

Q. On the occasions when you see Mr. Black, do you go over generally with him contemplated large expenditures? A. No.

Q. Have you ever made any recommendations or suggestions regarding such matters?

A. No, I have not.

Q. Has there ever been a difference of opinion between you and Mr. Black regarding the advisability of applicant expending a large amount of money for a major improvement? A. No.

(Testimony of James Fogarty.)

Q. The construction work which required refinancing or raising of additional money, on that you would expect to be advised, would you?

A. When the matter would be in such shape as to be presented to the Board of Directors, Mr. Black might inform either Mr. Freeman or me of such action, although there have been a number of instances of refunding concerning which we have not been advised in advance.

Q. Have you or any representative of the North American Company ever initiated the idea of a major construction project for the applicant?

[1511]

A. No.

Q. Do you know of any instances in which you or any representative of the North American Company has voiced his disapproval of a contemplated piece of work after which Mr. Black has submitted the same to applicant's Board for favorable action thereon? A. No.

Q. Has the North American Company been advised as to contemplated major acquisition by the applicant, if any have been made, since 1930?

A. I cannot think of any major acquisitions that have been made by P. G. & E. in recent years.

Q. Have there ever been such acquisitions proposed which have been not recommended by you?

A. We have never made any recommendation as to acquisitions.

(Testimony of James Fogarty.)

Q. Could you generally describe the extent to which you and Mr. Black have conferred on matters of a general nature pertaining to the applicant's business?

A. Not in any detail. I would say that the discussions had to do with the condition of the company's business, that is, possible increase in electric and gas output, the prospect of earnings, of growth, perhaps the possibility of refunding to effect savings, or the condition of the bond market which would have some effect on finances. [1512]

Q. Have you and Mr. Black ever agreed upon a general policy to be followed by the applicant in regard to its financial and operating matters?

A. No.

Q. Have there been occasions on which Mr. Black has asked your opinion regarding such policies of the applicant?

A. No, he has not asked my opinion about policies, but, on occasion, has inquired as to the state of the bond market and financial conditions in general, if there was a thought that the company might do some financing.

Q. You do feel free to make any suggestions that might come to your mind to Mr. Black concerning the applicant's affairs, do you, Mr. Fogarty?

A. Yes.

Q. To what extent have you made such suggestions? A. None that I can recall.

(Testimony of James Fogarty.)

Q. Have you given Mr. Black any advice on the Hetch-Hetchy situation? A. No.

Q. Has the North American Company or its representatives ever participated in applicant's activities in connection with municipal elections on bond issues to raise money to build a municipal distribution plant for the City of San Francisco?

A. No. [1513]

Q. Could you state what type of problem you, as a representative of the North American Company, believe Mr. Black should submit to the North American Company before final action is taken thereon by the applicant?

A. Only such matters as would customarily be brought before the stockholders. So far as Mr. Freeman and I as directors of the Pacific Gas and Electric Company are concerned, important matters which would require the judgment and the action of the Board would be those which Mr. Black might bring to our attention in advance and perhaps ascertain our thought as directors of the company concerning them.

Q. Well, how many instances can you now recall where Mr. Black has conferred with you regarding a particular policy prior to the time the matter was submitted to the applicant's Board for action by the Board?

A. The only case that occurs to me is the settlement of the gas rates that I referred to before.

(Testimony of James Fogarty.)

Q. Other than that, you have not been advised of any particular matters of major importance which were to be determined by applicant's Board prior to the time you received the minutes of the meeting at which the action relating to that particular matter was taken?

(Question read.)

A. That is correct, so far as I can recall. [1514]

Q. Did you ever discuss the dividend policy of the applicant with Mr. Hockenbeamer?

A. No, I did not.

Q. On your direct testimony, did you state everything you know of the action which was taken by the North American Company after the dividends were reduced on the common stock of the applicant in 1933? A. Yes. [1515]

Q. And North American Company was not apprised that such deduction in dividend was contemplated before the Board decided to reduce the dividend? A. That is correct.

Q. Did you feel that North American should have been advised by Mr. Hockenbeamer of this reduction before the action was taken by the Board?

A. Yes. Our feeling was that it was such an important matter that the Directors of the company should have been advised that it was contemplated.

Q. Were you apprised of the increase in dividend before the same occurred in 1936? A. No.

Q. Did you not consider the increase of dividends

(Testimony of James Fogarty.)

a matter of importance equal to the reduction of dividends in 1933?

A. Yes. Yes, it was of equal importance, but the effect of it would be an entirely different matter. There could not be—the same questions would not arise in that case as would have arisen in the case of a reduction of the dividend. By that I mean that company's earnings and its surplus and its cash position were such that during what might have been regarded as a temporary condition, or temporary situation, the company could have continued dividends at its regular rate. It might have had some influence on [1516] the company's credit to have reduced them at that time. Adverse influence, I mean.

Q. Did Mr. Black seek your advice, or your opinion, or your comments on the question of increasing dividends before he submitted the matter to the Board? A. No.

Q. And when did you first learn that the Board had taken such action?

A. Well, I couldn't say just how soon after the Board's action that we were advised.

Q. Do you know from whom you received such advice or information?

A. No, I don't recall the circumstances.

Q. Have you ever discussed applicant's dividend policy with Mr. Black? A. Not that I recall.

By the Examiner: Did you ever make any request of the Company for the Board of Directors

(Testimony of James Fogarty.)

of the Pacific Gas & Electric Company after the dividend reduction in 1933, that you members of the Board in New York be notified before any other change, or similar action was undertaken by the Board in California?

The Witness: I couldn't say whether such report was then made by Mr. Dame or Mr. Gruhl or Mr. Black.

The Examiner: But you personally know of none? [1517]

A. I personally know of none.

By Miss Calkin:

Q. If Mr. Black contemplated recommending a decrease in the dividends on applicant's common stock, do you feel that he should advise North American of such contemplated recommendation before he submitted the matter to the Board?

A. I think that he should advise the Directors of the company that such a matter was contemplated to be recommended by the officers so that the directors might give the matter some thought.

Q. Is there any understanding between you and Mr. Black that he will advise you of any contemplated change in applicant's dividend policy?

A. No, there is no such understanding.

Q. Has the subject of dividends ever been discussed over long-distance telephone between you and Mr. Black? A. Not that I recall.

Q. Has there been any correspondence between you on this subject? A. Not that I recall.

(Testimony of James Fogarty.)

Q. Have you ever communicated with Mr. Black and asked what dividends he contemplated recommending at a particular Board meeting?

A. No.

Q. To what extent have you discussed applicant's [1518] personnel organization with Mr. Black?

A. I do not recall that I ever discussed it with him.

Q. Have any employees been transferred from North American subsidiaries other than Western Power Corporation to the applicant? A. No.

Q. Has Mr. Black discussed with you the advisability of making changes in the occupancy of any of applicant's key positions? A. No.

Q. To what extent are you familiar, and are you acquainted, with the individuals holding key positions with the applicant other than the officers of the company?

A. I do not recall anyone who is not an officer or counsel of Pacific Gas & Electric Company whom I know.

Q. Have you ever made any recommendations or suggestions to persons occupying the position of department heads with the applicant? A. No.

Q. Your discussions concerning applicant's business have been almost exclusively with Mr. Black or Mr. Hockenbeamer.

A. Not with Mr. Hockenbeamer, as I recall, but on the few occasions to which I referred earlier on which I have been in San Francisco, I talked with

(Testimony of James Fogarty.)

Mr. Black, or [1519] I have been to see Mr. Downing, Mr. Coghlan, and Mr. Wishon, but such discussions as I had with them are of a general nature.

Q. Doesn't North American Company have a rate expert in its employ? A. Yes.

Q. Who is that? A. Mr. Neil.

Q. Has Mr. Neil ever performed any work for the applicant? A. No.

Q. Are applicant's taxation problems submitted to North American tax experts for advice?

A. No.

Q. Has North American ever advised the applicant on any tax problems.

A. Not to my knowledge.

Q. Would such advice be given if it were requested?

A. I believe that any information that we have that would be useful to a company in which we had as large an interest as we have in the Pacific Gas & Electric Company would be gladly furnished.

Q. The North American Company maintains a rather substantial accounting department, does it not? A. It does. [1520]

Q. Does the accounting department perform services for North American subsidiaries and advise them on matters?

A. It meets with officers of subsidiaries from time to time and members of our accounting staff discuss accounting problems with them.

(Testimony of James Fogarty.)

Q. Those services are rendered free of charge?

A. Yes.

Q. Free advisory arrangement, is it not?

A. Yes.

Q. Are the services of this department available to the applicant?

A. I think the answer to that question would be covered by my earlier answer, that any information or assistance we could—the P. G. & E. might call on us for, we would gladly give.

Mr. Phleger: I would like to interrupt. When you use the word "available" you have a different connotation other than if request was made. It is not available, is it?

The Witness: No, it is not available as such.

By Miss Calkin:

Q. Have representatives of that accounting department ever consulted with a representative of the applicant on accounting matters?

A. Not to my knowledge.

Q. Does the North American Company have an insurance [1521] expert in its employ?

A. No.

Q. Mr. Fogarty, can you describe the nature of the services performed under fiscal service contracts which were in force in the North American Company and its subsidiaries prior to 1935?

A. Yes. The coupons of bonds and indentures, interest bearing securities of our subsidiary com-

(Testimony of James Fogarty.)

panies, were paid. Dividends on stock of such companies as had stock outstanding in the hands of the public and largely held in the East or listed on the New York Stock Exchange were paid. Our Transfer Department handled the transfers of stock of the companies where transfers are required in New York because of listing on the Stock Exchange or the Curb.

Q. Did the Western Power Corporation and its subsidiaries have such a contract with the North American Company prior to 1930?

A. Such an arrangement was in effect but not by contract.

Q. Has there ever been in existence a fiscal service contract between the North American and the applicant? A. No.

Q. Did the North American Company cease to render such service for Western Power Corporation after June, 1930? A. It did. [1522]

Q. Why was such contract not entered into between the applicant and the North American Company after 1930?

A. There was no reason why it should be.

Q. Did the North American Company ever perform any of the services provided for in such contract for the applicant.

A. No. And those matters, as I said before, were arrangements rather than contracts. I mean, there were no written documents covering them.

(Testimony of James Fogarty.)

Q. But none of the services performed under those arrangements were performed for the applicant? A. That is correct.

Q. Can you describe the Station Advisory Committees, with particular reference to who composed such committees and what its functions are?

A. The Station Advisory Committee is composed of engineers of the various subsidiaries of the North American Company who meet at frequent intervals to discuss common problems with respect to power plant and station line operations, types of equipment to be installed in power plants, contemplated to be constructed, and matters having to do with technical features of the operation of the subsidiary companies.

Q. Has the applicant ever had any representative on this committee? [1523] A. No.

Q. Do you know whether or not any of applicant's engineers have ever attended meetings of the Station Advisory Committee?

A. I could not say, but I do not know of any instance in which they have.

Q. Do you know whether or not applicant's engineers have ever been invited to participate and have a membership on this committee?

A. I know of no such invitation.

Q. If applicant had requested representation on this committee, would such representation have been granted to him?

(Testimony of James Fogarty.)

A. Yes. I think the answer to that question is covered by my earlier answer. If the engineers of the North American subsidiaries had knowledge or experience which would be useful to the Pacific Gas & Electric Company, and it could be used beneficially by them, I am sure that organization would have been glad to provide it.

Q. Do you know of any such instance in which such information has been requested of the engineers of the subsidiaries of North American?

A. I do not recall any.

Q. You testified on direct examination, I believe, concerning group purchase contracts. Are all of the North American subsidiaries entitled to benefits provided in such [1524] contracts?

A. Not now. Those contracts are no longer in effect.

Q. You have no such contracts?

A. We have no such contracts now.

Q. That has been true since when?

A. I could not say when they were terminated but it was, I would say, several years ago.

Q. Were such contracts in existence subsequent to 1930? A. I believe they were.

Q. Has the applicant ever been one of the companies listed in such contracts as beneficiary entitled to discounts provided for therein? A. No.

Q. Did the North American Company ever offer the applicant the opportunity to participate in such contracts? A. Not that I recall.

(Testimony of James Fogarty.)

Q. Do you know whether or not the applicant ever requested the North American Company to include it as one of the beneficiaries in its group purchase contracts?

A. I know of no such request.

Q. Mr. Fogarty, can you describe generally the departments into which the personnel of the North American Company is divided and to the respective functions of each?

A. Yes. We have a Comptroller's Department which [1525] handles accounting matters of the North American Company and confers with the accounting officers and their assistants of the subsidiary companies. We have a Research Department which studies problems in connection with operations, integration; we have a Treasurer's Department which handles financial work of the payment of coupons, disbursements, cash disbursements in general, and we have the Secretarial Department which takes care of all corporate records. [1526]

Q. Do these departments perform services for the subsidiaries of the North American Company?

A. Yes, of the nature that I have described, in consultation with the respective officers and their assistants of the various subsidiary companies.

Q. In other words, they keep in close contact with the management and officers of the operating subsidiaries? A. That is correct.

Q. Do these departments perform any services for the applicant? A. No, they do not.

(Testimony of James Fogarty.)

Q. What is the extent of the contact between the applicant and those various department heads?

A. None.

Q. Can you describe the organization located on the 18th floor of the North American Building here in New York City, Mr. Fogarty?

A. That organization now has been changed so that the members of it who perform functions of the nature of those which would come under these various departments are now members of those various departments. That organization in its former form no longer exists.

Q. Well, the departments that you have just described as existing in the North American Company, that is, the secretarial, treasurer's, and comptroller's department, those [1527] still exist, do they not?

A. Oh, yes, yes, and it is into those departments that the members of the former 18th floor organization have been absorbed.

Q. You mean you now have no organization on the 18th floor such as you had in the Fall of '39?

A. That is correct.

The Examiner: Did that organization have any name?

The Witness: No, it was a group of employees who were paid by the subsidiary companies of the North American Company directly for rendering service, largely for them, and they are now members of the North American organization, and while

(Testimony of James Fogarty.)

they render the same service in the manner in which I have described, they are now employees of the North American.

By Miss Calkin:

Q. And are paid by the North American Company? A. Paid by the North American.

The Examiner: Prior to that, they were paid by the different subsidiaries collectively, or by different individual subsidiary companies?

The Witness: No, their salaries were paid by various companies. Each member of that organization received part of his salary from each of the subsidiary companies.

By Miss Calkin:

Q. Approximately how large was that organization on [1528] the 18th floor at the time it was operated as such?

A. Perhaps 12 or 14 people.

Q. And that organization existed subsequent to 1935 until the present arrangement, Mr. Fogarty?

A. That's right.

Q. During the period it was in existence, did the personnel of that organization perform any services for the applicant? A. It did not.

Q. Do you know whether or not that organization had any contracts with the applicant?

A. No, there were no contracts that I know of.

Q. And none of the employees of that organization were paid by the applicant?

(Testimony of James Fogarty.)

A. That is correct.

Q. Have you ever discussed with Mr. Black the advisability of the applicant having some New York employees in the North American office?

A. No.

Q. Did that group of persons ever assist the applicant in the preparation of its registration statements? A. No.

Q. Mr. Fogarty, I am informed that about the time of the effective date of the Public Utility Holding Act of 1935, that certain changes occurred in the relationships between [1529] the North American Company and certain utility companies, in which North American had a substantial investment. Will you describe all such changes which occurred at that time in the relationship between the North American Company and the applicant?

Mr. Phleger: Well, just a moment, that is a strange question.

By Miss Calkin:

Q. Well, all such changes, if any, which occurred at that time? A. There were no changes.

Q. Why was that true?

A. Because there were no arrangements in effect.

Q. Well, is it true, then, to say that the situation which had existed with reference to the North American Company and the Detroit Edison Company, for example, at the time of effective date of the

(Testimony of James Fogarty.)

Public Utility Holding Act, did not exist in reference to the applicant, certain arrangements which—

A. That is true. Such arrangements as existed with respect to the Detroit Edison Company did not exist with respect to the Pacific Gas and Electric Company.

Q. Would you say that in your opinion applicant's relationship to the North American Company is the same today as it was on the effective date of the Public Utility [1530] Holding Company Act of 1935? A. I would, yes.

Mr. Phleger: Might I just supplement that question?

And is the same as existed one month before the Public Utility Holding Company Act became effective? The Witness: Yes.

The Examiner: Was that the date of the contract?

The Witness: Effective date of the Public Utility Holding Company Act.

The Examiner: What was the date you are referring to?

Mr. Phleger: She very carefully asked whether the relationship was the same now as when the Act became effective, and it became effective some time after it was enacted, and I would think the more important question would be whether or not there was any change in the relationship while the Public Utility Holding Company Act was in process of being enacted, because I imagine these changes all

(Testimony of James Fogarty.)

took place, whatever they may have been, before the effective date.

The Examiner: Technically, after the approval of the President and before the effective date.

Mr. Phleger: Yes, that is the point of my question.

By Miss Calkin:

Q. Were there any changes that occurred during the period that at least could have been anticipated that there [1531] would be a Public Utility Holding Company Act of 1935?

A. No, the relationship of the North American Company to the Pacific Gas and Electric Company is the same as it was when the transaction of June, 1930, became effective, and has been so consistently since that time.

Q. Mr. Fogarty, during your long period of service with the North American Company, it is true, is it not, that most of your attention has been devoted to the financial problems of the North American Company and its subsidiaries, as distinguished from the operating problems?

A. Yes, that was true until I became president, and then my responsibilities became wider in scope, but never with respect to detailed operations of the subsidiary companies.

Q. Who in the North American Company offices supervises and acts in an advisory capacity on the financing of its various subsidiaries?

(Testimony of James Fogarty.)

A. I do.

Q. And who formulates the refinancing plans of the North American Company and its subsidiaries, and by that I mean, who determines whether or not certain issues will be refunded, whether new money shall be raised, and what type of securities shall be issued.

A. Those matters are passed upon by the Board of Directors. [1532]

Q. You mean of the respective companies?

A. Yes. I understood you to say the North American Company. That would be true with respect to each of the subsidiary companies.

Q. They are passed upon by those respective Boards after a definite plan has been formulated?

A. That is correct.

Q. And you act in an advisory capacity in connection with the formulation of those plans; do you not?

A. With respect to the North American Company we formulate the plans ourselves and present them to the North American Board. With respect to our subsidiary companies, we sometimes develop and recommend the plans to them, or, if the plans are developed and recommended by the officers of the operating company, we act in a consulting and advisory capacity with them.

Q. Is there any one in the North American Company's organization more active in this type of work than you are? A. No.

(Testimony of James Fogarty.)

Q. Who did the work of this nature during the years 1930 to '35?

A. Well, that work is not done by any one officer. The financial plans are considered by all of the executives before they are presented to the North American Board.

Q. During that five-year period, from 1930 to '35, [1533] you occupied much the same position as you now occupy with reference to the formulation of those matters? A. Yes.

Q. What discussions did you participate in or did you know about pertaining to the necessity for future financing by the applicant at the time the North American acquired the securities of the applicant?

A. I know of no discussion of that subject at that time.

Q. Did you, or to your knowledge did any one discuss with Mr. Hockenbeamer or any one in applicant's organization the financing which resulted in the sale of bonds by the applicant in 1930 and 1931? A. No.

Q. You were apprised of the fact that the National City Company had the leadership of applicant's financing for a number of years at the time the North American acquired its stock in the applicant, were you not?

A. Yes, I believe we were generally familiar with the investment banking firms that headed the

(Testimony of James Fogarty.)

business of principal operating companies throughout the country.

Q. Did you participate in, or do you know about, any discussions dealing with leadership of future financing by the applicant? A. No. [1534]

Q. Was it understood at that time, that is, in 1930, that the National City Company would continue to head any financing of the applicant?

A. Not so far as I know.

The Examiner: Do you mean understanding with the P. G. & E. and its officers, or just an assumption?

Miss Calkin: No, an understanding with the applicant.

A. I know of no understanding on the part of P. G. & E. with anybody.

By Miss Calkin:

Q. Do you recall what your first information that the applicant intended to sell $25,000,000. principal amount of bonds in July, 1930 was, and where you got that information?

A. No, I don't recall the circumstances.

Q. Was there any understanding at the time North American acquired the applicant's common stock between the North American Company and Mr. Hockenbeamer as to what rights the bankers of Western Power Corporation would have in the future financing of the applicant?

A. No, no understanding, so far as I know.

(Testimony of James Fogarty.)

Q. Who selected the National City Company to head the $25,000,000. issue of July, 1930, if you know?

A. I suppose the executives of the Pacific Gas and Electric Company. [1535]

Q. Did you or any representative of the North American Company have anything to do with the selection of the members of the underwriting syndicate which purchased that issue? A. No.

Q. Did you request Mr. Hockenbeamer to give consideration to any banking firm in connection with the 1930 issue? A. No.

Q. Did you have anything to do with the negotiations which resulted in the financing of the issue of $25,000,000. bonds of July, 1930?

A. My answers have been with respect to any issues of securities, so that my answer would be the same, whether it was 1930 or 1935, but I understood Miss Calkin to be talking about 1930.

Q. I am talking about the earliest financing after North American acquired its interests in the applicant.

A. My reply would apply to any financing, no.

Q. Now, applicant's next piece of financing was a $25,000,000. issue of bonds sold in January, 1931, to a syndicate headed by National City Company. Did Mr. Hockenbeamer consult you as to the advisability of this piece of financing, Mr. Fogarty?

A. No.

(Testimony of James Fogarty.)

Q. Were you apprised of the fact that these bonds would be sold prior to the date of their sale?

[1536]

A. Not that I recall.

Q. Did you have anything to do with the selection of the National City Company as syndicate manager of that issue? A. No.

Q. Did Mr. Hockenbeamer confer with you with regard to the price, spread, interest rates and similar matters, with respect to that issue?

A. No.

Q. Did you carry on or participate in any negotiations with the National City Company with respect to the 1931 issue? A. No.

Q. Do you know whether or not any banking house solicited your aid in getting a participation in that issue, that is, 1931?

A. I don't recall particularly, but if there was any banking firm that hoped to get a participation in any issue of the securities of the Pacific Gas and Electric Company in which North American had any interest, I am sure they would have asked our help, or the help of anybody else that they thought could help them get a participation, but I do not recall any.

Q. According to applicant's Exhibit No. 42, applicant's next piece of financing was a $45,000,000. issue headed by [1537] Lazard Freres & Company in March, 1935. Are you acquainted with Mr. Rus-

(Testimony of James Fogarty.)

sell connected with the firm of Lazard Freres & Company? A. I am.

Q. How well do you know Mr. Russell, Mr. Fogarty?

A. I have known Mr. Russell for a number of years, but not intimately.

Q. Prior to March, 1935, did you have any conversations with Mr. Russell regarding the future financing of the applicant? A. No. [1538]

Q. You were aware of the fact, were you not, that National City Company was out of the investment banking business at the time the applicant decided to do this piece of financing and therefore would not be able to head an underwriting syndicate for the purchase of its securities?

A. I do not identify with the time of issue of any securities the time when the various banks—investment banking affiliates—were required to dissolve the—get out of the investment banking business.

Q. Do you not recall that the Banking Act, I believe, was passed along in 1933, and at that time there was a general rearrangement of banking associations?

A. Yes, I recall that, but I did not recall the time when that took place. My point was I could not associate that with any particular security issue.

Q. Do you recall Mr. Hochenbeamer being in New York in September of 1934?

A. No, I do not, although he may have been.

Q. Do you recall having talked with Mr. Hoch-

(Testimony of James Fogarty.)

enbeamer at any time prior to the issuance of the March 1935 bonds? A. No, I do not.

Q. In reference to the contemplated financing?

A. No, I do not.

Q. Did you discuss with Mr. Hochenbeamer at any time prior to the sale of the bonds which were sold in March, [1539] 1935, the selection of a syndicate manager for this issue?

A. No, I do not recall having discussed the selection of a syndicate manager for any of the issues of the Pacific Gas & Electric Company.

Q. Did you ever at any time tell Mr. Hochenbeamer that you wanted Mr. Russell's firm to act as syndicate manager? A. No, I did not.

Q. Did you ever tell him or suggest to him that any other firm head that piece of business?

A. No, I did not.

Q. When did you first learn that Lazard Freres & Company would act as syndicate manager of that issue?

A. I cannot identify the date, but I do recall an issue of securities of the Pacific Gas and Electric Company which Lazard Freres & Company was selected manager for the first time. When I learned of it I could not say. I think that it was when there was public notice of the proposed issue of securities and announcement of the underwriters' names.

Q. As president of the North American Company which had very substantial investment in the

(Testimony of James Fogarty.)

applicant, you were naturally interested in seeing that a major piece of financing by the applicant was handled by a responsible syndicate, particularly in view of the fact it was one of the first [1540] large pieces of utility financing which had been attempted during that period of time, were you not, Mr. Fogarty? A. Yes.

Q. Did you not give Mr. Hochenbeamer the benefit of your views in connection with who should be syndicate manager and the membership of that syndicate and type of security to be sold?

A. No. Mr. Hochenbeamer was himself essentially a financing man and had a reputation of being one of the best.

Q. As soon as it became known on the Street applicant contemplated selling a bond issue, several banking houses considered getting the leadership or a membership in the syndicate, did they not?

A. I do not recall the circumstances, but I imagine that would be true in connection with the issuance of securities by any responsible company and with respect to any responsible bankers.

Q. Do you recall whether or not the representatives of any banking houses talked to you prior to the sale of the securities and formation of a syndicate in an effort to get you to use your influence to get them a participation in the syndicate?

A. No, I do not have a recollection of such a discussion with any investment banking firm.

Q. Do you know Mr. Loring Hoover? [1541]

(Testimony of James Fogarty.)

A. I do.

Q. He is associated with the First Boston Corporation, is he not?

A. No, he is not. He was for a while.

Q. With Blyth & Company?

A. A short time, I believe. He is associated with Blyth & Company.

Q. Do you recall, Mr. Fogarty, Mr. Hoover having been in Washington at the time you were down there watching the progress of the proposed Utility Holding Company legislation and seeing Mr. Hoover on that occasion? A. Yes.

Q. Did he talk to you at that time about the possibility of Blyth & Company getting the leadership of that syndicate which purchased the bond issue in March 1935, by the applicant?

A. He did not.

Q. Do you recall whether or not Mr. Hoover ever talked with you about the desire of Blyth & Company to head that syndicate?

A. No, I do not recall such discussion.

Q. Did you ever talk to Mr. Russell about heading this syndicate? A. No, I did not.

Q. Would you say the representatives of no banking [1542] firms solicited your aid in getting them the leadership or a participation in the March 1935 syndicate?

A. I am sure that so far as I can recall I should say no banking firm ever discussed with me the question of leadership in the syndicate, in any syn-

(Testimony of James Fogarty.)

dicate of the Pacific Gas & Electric Company. But banking firms may have raised the question from time to time with respect to other issues, as a possibility of their becoming participants in any underwriting syndicate.

Q. If they made such a request for your assistance then what did you tell these people?

A. My uniform policy was to tell them that Pacific Gas & Electric Company was independently managed and operated and the North American Company had no voice in such matters.

Q. Did you ever communicate any of the requests which were made of you to Mr. Hochenbeamer? A. No.

Q. Did you ever make any recommendations to Mr. Hochenbeamer concerning leadership of or membership in the March 1935 syndicate?

A. No, not that I recall. No.

Q. Did you suggest to Mr. Hochenbeamer at any time prior to March 1935 that Dillon, Read & Company be considered as syndicate managers of this issue? A. No. [1543]

Q. Is it a true statement that Dillon, Read & Company has acted as syndicate manager in practically all of the major financing which North American or its subsidiaries have had for a number of years? A. Yes, in most cases.

Q. Did Dillon, Read & Company ever request you, or to your knowledge, any other representative

(Testimony of James Fogarty.)

of the North American Company to do whatever you could to get them the leadership or a participation in the March 1935 issue of the applicant?

A. Dillon, Read & Company never asked me or any other representative of the North American Company so far as I know to get them the leadership, but it is possible that some member of Dillon, Read & Company may have spoken to me about the firm getting participation. But as to that I do not recall.

Q. If they did do so would you have given them the same answer you have already testified to as having been given to any other banking houses?

A. I would.

Q. Did you carry on any negotiations with Lazard Freres & Company relative to this piece of financing—that is, the 1935 issue—and if so, what negotiations did you carry on? A. None.

Q. Did Mr. Hochenbeamer consult with you regarding [1544] the price at which these bonds should be sold and the interest they should bear and similar matters in connection with such securities?

A. No.

Q. Did he ever confer with you regarding the condition of the markets prior to any financing that was done during the time of his presidency?

A. Not that I recall.

Q. Did you recommend to Mr. Hochenbeamer the selection of Lazard Freres & Company to head

(Testimony of James Fogarty.)

the syndicate which purchased the March 1935 issue? A. I did not.

Q. Did you ever express to Mr. Hochenbeamer any dissatisfaction over the selection of Lazard Freres & Company? A. I did not.

Q. Did Mr. Hochenbeamer ever tell you why he selected Lazard Freres & Company as the syndicate manager if the selection were made by him?

A. I did not.

Q. You and Mr. Black talked over this piece of financing, did you not, Mr. Fogarty?

A. Not that I recall.

Q. Did you ever give Mr. Black any instructions to communicate with Mr. Hochenbeamer on any matter pertaining to the financing of the applicant? [1545]

A. No.

Q. Are you a close friend of anyone in the Brown-Harriman organization—I think that name has been changed to——

A. Harriman, Ripley & Company.

Q. Harriman, Ripley & Company?

A. Yes, I know Mr. Ripley the president of Harriman, Ripley & Company very well.

Q. What contacts, if any, did you have with him in connection with the participation of his company or his banking firm in the applicant's financing?

A. None.

Q. Do you know how they got substantial participation in the March 1935 issue?

(Testimony of James Fogarty.)

A. No, I do not.

Q. Do you know whether or not any members of the Harriman-Ripley organization at any time were formerly associated with the National City Company?

A. Yes, I believe Mr. Ripley was a—had also been a vice-president of the National City. As was Mr. Russell.

Q. Do you know whether or not a substantial number of persons formerly connected with the investment banking business of National City Company became members of the banking firm of Harriman, Ripley & Company upon the secession of National City Company in the participation of investment [1546] banking business?

A. I believe a number of the officers of Harriman, Ripley & Company were formerly connected either as officers or in other capacities with the National City Company. But I could not say whether they became members of the Harriman, Ripley organization immediately upon the dissolution of National City Company.

Q. But you would say that Brown, Harriman's participation in the March 1935 issue was not due to any solicitation which they made of you?

A. Yes, I would say that.

Q. Did representatives of any of the following firms confer with you prior to March 28, 1935, in regard to participation in the syndicate being formed by the applicant: Blyth & Company?

(Testimony of James Fogarty.)

A. I am not clear as to whether Mr. Lieb of Blyth & Company spoke to me about the matter or not. He may have.

Q. What about E. B. Smith & Company? Are you acquainted with that banking firm?

A. Yes. I know two of the officers of E. B. Smith & Company—now Smith, Barney & Company. I do not recall a discussion with any of those officers.

Q. How about First Boston Corporation?

A. Yes.

Q. Are you acquainted with Mr. Addinsell?

[1547]

A. Yes, I am.

Q. Do you recall whether Mr. Addinsell or any of his associates requested you to assist him in getting participation in this business?

A. No, I don't.

Q. Bonbright & Company?

A. I am acquainted with the president of Bonbright & Company but I do not recall their having raised the question.

Q. Do you know anything about how Blyth & Company got second position on the West Coast in the March 1935 issue? A. No, I do not.

Q. Were you of the opinion in February 1935 that Blyth & Company should have had, or should have the leadership of this applicant's piece of financing?

A. I do not recall that I had any opinion in the matter.

Q. And you did not express any to Mr. Hochenbeamer? A. No.

Q. After the $45,000,000 issue was placed on the market, did you have any discussion with representatives of Blyth & Company prior to June 1935 when the applicant sold $30,000,000 of its bonds to a syndicate headed by Lazard Freres & Company that you recall now?

A. No, not that I recall. [1548]

Q. Mr. Fogarty, I hand you what purports to be a photostatic copy of a telegram dated February 15, 1935, from Mr. Lieb to Mr. Charles I. Blyth, and will ask you to read this instrument and see if it refreshes your recollection as to efforts made by Blyth & Company to get you to intervene on their behalf?

A. No, that does not recall to my mind anything that I have not stated.

Q. You do not now, then, recall specifically any activities on the part of Blyth & Company to get the leadership of applicant's financing?

A. No, I do not recall anything specifically. But as I indicated before I was not entirely clear about when a conversation might have taken place with Mr. Lieb. I have what you might call a hazy recollection that Mr. Lieb talked with me about the Pacific Gas & Electric financing, but I could not say when that was or whether it had to do with

(Testimony of James Fogarty.)

a participation or the leadership of the syndicate.

Y. You were apprised during that period, were you not, that Blyth & Company were most anxious and zealous in their efforts to get leadership of this business?

A. I do not recall that, but this telegram suggests to me somebody was trying to bring it to my attention. At that particular time, which was shortly after the Public Utility Holding Company bill was introduced in February, [1549] 1935, I was pretty fully occupied with that.

Q. The evidence already in this record I believe shows certain representatives of Blyth & Company had been in touch with Mr. Black and endeavored to get him to use whatever influence he might have on Mr. Hochenbeamer to get them the leadership of this business. Do you recall whether or not Mr. Black reported these conversations to you and what discussions, if any, you had with Mr. Black on the subject?

A. No, I do not recall them specifically, but undoubtedly if Mr. Black had any such discussions he mentioned them to me at the time.

Q. Do you recall whether or not you ever advised Mr. Black to get in touch with Mr. Hochenbeamer and suggest that Mr. Hochenbeamer take any particular action in reference to the membership of the syndicate? A. No.

Q. Did Mr. Hoover of Blyth & Company assist you and other utility executives to your knowledge

(Testimony of James Fogarty.)

in opposition to the Public Utility Holding Company Act of 1935?

A. Mr. Hoover did not assist any utility men as such, so far as I know. I believe he did speak to some members of Congress or perhaps some members of the United States Senate concerning legislation during the time he was in Washington.

Q. Do you know Mr. Ford or Mr. Woods of First Boston [1550] Corporation?

A. I know Mr. Woods.

Q. Do you know Mr. Ford?

A. Yes, I know Mr. Ford.

Q. Do you recall whether or not Mr. Ford ever talked to you regarding the desire of the First Boston Corporation to get a participation in applicant's financing? A. No.

Q. Did Mr. Hochenbeamer's first selection of Lazard Freres Corporation as syndicate manager of the 1935 issue weaken his position with the North American Company or the regard in which that corporation held him?

A. No, it did not have any effect on him.

Q. Did you ever tell anyone that it had that effect? A. No.

Q. Were you personally sympathetic with Blyth & Company's efforts to get the leadership of applicant's financing?

A. I don't recall very much about the efforts that they were making, but knowing of the standing of Blyth & Company, it would certainly have

(Testimony of James Fogarty.)

seemed to me that to have a firm of its financial responsibility and distributing ability to head the business, would be a good thing for the Pacific Gas & Electric Company.

Q. At that time would you have favored the selection [1551] of Blyth & Company over that of Lazard Freres & Company?

A. I don't know, that is, I cannot say what my feelings would have been, but I would say this, that I had had the knowledge for some time of the standing and distributing ability of Blyth & Company, whereas Lazard Freres had more recently been organized, and I did not have as much knowledge of its distributing ability.

Q. Is your friendship with Mr. Russell as close or as great as your friendship with Mr. Mitchell or Mr. Lieb or Mr. Hoover?

A. No, I know Mr. Mitchell and Mr. Lieb and Mr. Hoover much better than I know Mr. Russell.

Q. Are you acquainted with Mr. Charles R. Blyth? A. I am.

Q. How long have you known him?

A. I believe I met him first in connection with a proposed refunding of San Joaquin Light & Power Corporation bonds in 1926.

Q. His firm headed that issue?

A. I believe they headed it jointly with Pierce, Fair & Company.

Q. Do you usually call on Mr. Blyth when you are in San Francisco?

(Testimony of James Fogarty.)

A. Yes, I would say that I usually do.

Q. Did you, in any manner, between January 1st, 1935, [1552] and Mr. Hochenbeamer's death, do anything to assist Blyth & Company in getting substantial participation, or in their efforts to get the leadership of applicant's financing?

A. No, I did not.

Q. Did you have anything to do with Blyth & Company's being able to get a portion of the management fee in later issues of 1935 financing?

A. I did not.

Q. Do you know anything about why their position was improved? A. No, I do not.

Q. Do you now recall any conversations which you have had with Mr. Hochenbeamer during 1935 relating to applicant's financing?

A. No, I do not recall having had any conversations with Mr. Hochenbeamer concerning Pacific Gas & Electric Company financing.

Q. So you would say that you never suggested to Mr. Hochenbeamer during 1935 that he give the leadership of applicant's financing to Blyth & Company? A. Yes.

Q. Did you ever make the statement to anyone that you were surprised that Mr. Hochenbeamer did not follow your suggestions and give Blyth & Company the leadership of [1553] applicant's financing?

A. No, I do not recall ever having made such a suggestion.

(Testimony of James Fogarty.)

Q. And you never gave any instructions to Mr. Black on the subject, for him to convey to Mr. Hochenbeamer? A. No.

Q. Now, in March 1936, before the March 1936 issue of the applicant, Mr. Black had become president of the applicant. Did you have any discussions with Mr. Black prior to his leaving New York to assume the presidency of the applicant regarding the necessity of a large refinancing program of the applicant in the comparatively near future?

A. No.

Q. Were you aware of the fact that such refinancing would be advisable within a short period?

A. No, I don't recall that I was.

Q. It is your best judgment now that the matter was never under consideration by yourself and Mr. Black prior to the time that he became president of the applicant? A. Yes.

Q. Was Mr. Black in New York between the date that he left here to take the presidency of the applicant, and the refinancing of March 1936, do you know?

A. It is my recollection that the first time I saw Mr. [1554] Black after he left the North American Company was when I saw him in San Francisco in July 1936.

Q. Did Mr. Black confer with you concerning the advisability of financing which took place in 1936 of the type of security to be issued, and get

(Testimony of James Fogarty.)

your ideas of the price at which the bonds could be sold?

A. No, I do not recall any time that Mr. Black sought advice as to the type of securities or the coupon rate or the price, but I had had conversations with him concerning the bond market and conditions in general.

Q. Do you know who formulated the refinancing plan which took place in March of 1936?

A. No, I do not.

Q. Did you keep Mr. Black closely in touch with market conditions shortly before this issue was sold?

A. No. My discussions with him on such matters were when he raised the question.

Q. Before Mr. Black left for San Francisco in November of 1935, what discussions, if any, did you have with him regarding the leadership of applicant's next piece of financing?

A. When he left San Francisco?

Q. Before he left for San Francisco.

A. Oh, none.

Q. At that time had you ever heard Mr. Black express the opinion that, for one reason or another, Lazard [1555] Freres were not the most desirable house to head applicant's financing?

A. I don't recall it specifically, but during the eight years that Mr. Black was in New York, he acquired a familiarity with the standing of the large investment banking firms, and he may have felt, as I indicated before, that I would have felt, that

(Testimony of James Fogarty.)

a newly organized firm would not be as effective as a firm of the standing and recognized distributing ability of Blyth & Company, but I do not recall his having expressed such an opinion.

Q. Well, was Mr. Black familiar with your views on the advisability of Lazard Freres & Company heading applicant's financing?

A. I don't recall, but he might have discussed that. My answer to your question before, I assumed was intended to be an expression of opinion rather than anything I may have said at the time, if the question had been raised with me.

Q. Would you say that Mr. Black was unfamiliar when he took over the presidency of the applicant, with your views on the standing of Lazard Freres & Company and their ability to distribute securities?

A. I would not say whether he knew what I thought or not, and my thought about it would have arisen only if the question had been raised.

Q. And you do not recall any discussions concerning [1556] future syndicate management with Mr. Black after you knew he would be president of the applicant, and prior to the time of the March 1936 issue? A. No.

Q. Now, after Mr. Black became president of the applicant, what conversations, if any, did you have with him regarding the leadership of applicant's next piece of financing?

A. None that I recall.

(Testimony of James Fogarty.)

Q. You never indicated to Mr. Black that a syndicate headed by Blyth & Company would be agreeable to the North American Company?

A. No, I do not recall the question having been raised.

Q. When did you first receive knowledge that the leadership of applicant's March 1936 issue would be headed by Blyth & Company?

A. I cannot identify any of these issues, but it is my recollection that my knowledge of it came in connection with the filing of registration statement and announcement of the underwriting syndicate.

Q. Do you recall what contacts, if any, you had with representatives of Blyth & Company between the date of Mr. Hochenbeamer's death and the sale of the $90,000,000 issue?

A. No, I do not. I don't recall any discussions with them of the matter. When you asked about my contacts with [1557] them, I, of course, from time to time would meet Mr. Lieb, but if your questions refer to discussions of the matter, I recall none.

Q. I believe the evidence shows that it was during that interval that Mr. Mitchell became associated with Blyth & Company. Do you recall having had any conversations with Mr. Mitchell subsequent to the time that he became associated with Blyth & Company and prior to the time Blyth & Company got the leadership of applicant's financ-

(Testimony of James Fogarty.)

ing, and prior to the time of Blyth & Company's desire to get such leadership?

A. No, I do not recall.

Q. Did you ever discuss the matter with Mr. Williams? A. No, not to my recollection.

Q. Mr. Williams never advised you of a discussion of the subject which he had with Mr. Mitchell on one occasion?

A. No, I don't recall that he did.

Q. Did Mr. Williams ever indicate to you that he would rather see Blyth & Company head applicant's financing than Lazard Freres & Company?

A. No.

Q. Do you know who determined the percentage or the respective participation of the various banking houses which participated in the March 1936 syndicate?

A. No, I do not. I assume that that was determined by the officers of the Pacific Gas & Electric Company, but [1558] I have no knowledge of it.

Q. Do you know who selected Blyth & Company as the syndicate manager of that issue?

A. No, but I assume that that decision was made by the officers of the Pacific Gas & Electric Company.

Q. Have you ever, since the formation of that syndicate, discussed with Mr. Black the leadership of Blyth & Company? A. No.

Q. Did you suggest to anyone that Dillon, Read & Company, Kuhn, Loeb & Company, and Morgan

(Testimony of James Fogarty.)

Stanley, receive substantial participations in the March 1936 issue? A. No, I did not.

Q. Do you know at whose suggestion these houses were given substantial participations?

A. No, I do not.

Q. Do you know from whom you first learned that they would be included in the syndicate?

A. No, I do not recall how I first learned of it, but I do recall that there was a substantial increase in the number of members of the syndicate as compared with previous financing, and at some time later I learned, or it was stated to me, that on account of the size of the issue, that it had been deemed advisable to have other large firms in as substantial participants. Just when I learned of that, I do not recall. [1559]

Q. Did Mr. Black confer with you prior to the time a list of underwriters was made up which composed this syndicate, and did he seek your advice as to what banking houses that syndicate should contain? A. No, he did not.

Q. Did you, or any other representative of the North American Company, to your knowledge, have anything to do with Dillon Read & Company's inclusion in that syndicate?

A. No, not so far as I can recall.

Q. Did Mr. Williams ever indicate to you that the firm of Dillon Read & Company should be given a participation in applicant's financing?

(Testimony of James Fogarty.)

A. I don't recall that he ever raised the question.

Q. Mr. Williams and Mr. Dillon of the firm of Dillon Read & Company are close personal friends; are they not, Mr. Fogarty?

A. I know they have known each other for many years. I don't know how close their friendship is.

Q. Did Dillon Read & Company request you to assist them in getting the participation which they got in this syndicate?

A. Well, I don't recall that specifically, but I should not be a bit surprised if somebody from Dillon Read & Company did not speak to me about the matter.

Q. Do you recall whether or not you communicated their [1560] wishes, if any were voiced, to Mr. Black?

A. No, I do not. When Mr. Black, during the time Mr. Black was in New York, he had come to know Mr. Forestol of Dillon Read & Company, and Mr. Forestol of Dillon Read & Company might very well have felt that he could talk to Mr. Black himself, so that I am not sure that Mr. Forestol or any one else at Dillon Read spoke to me about it, although, I say, they may have.

Q. According to applicant's Exhibit No. 42, the applicant issued $30,000,000. principal amount of bonds in May, 1936, and $35,000,000. in October, 1936, and Dillon Read & Company, Kuhn, Loeb & Company, and Morgan Stanley & Company were not members of the underwriting syndicates which

(Testimony of James Fogarty.)

purchased these issues. Do you know why these three houses were not included in those syndicates?

A. No, but I recall, and it may have been Mr. Black who told me, that at the time those three firms were included in one of the large issues of Pacific Gas and Electric Company, that there was an understanding that that inclusion was for that particular issue only, and without any future commitment.

Q. Did you have anything to do with the determination of the leadership or the membership of the two underwriting syndicates which purchased the May and October, 1936 issues of the applicant?

A. No. [1561]

Q. Did Dillon Read & Company ever express to you any dissatisfaction over their exclusion from these syndicates? A. No.

Q. Did Mr. Black confer with you prior to the approval of the applicant's Board of the financing which occurred in May and October of 1936?

A. No, I don't recall that Mr. Black conferred with me about Pacific Gas and Electric Company's financing in advance at any time except in connection with inquiries concerning the bond market in which he may have said, "We are perhaps thinking of a possible refunding."

Q. Have you ever carried on any negotiations with Blyth & Company when it was acting as syndicate manager of the issues put out by the applicant?

(Testimony of James Fogarty.)

A. No, I have never participated in any negotiations concerning Pacific Gas and Electric Company's financing.

Q. Did you recommend to Mr. Black the price which, in your opinion, the applicant should receive for the stock since he became President?

A. No.

Q. The record shows that the applicant privately placed a $15,000,000. bond issue in 1938. Did you have anything to do with the determination of the applicant to sell the $15,000,000. of bonds to several insurance companies and one bank rather than to the public? [1562] A. No.

Q. Did Mr. Black consult you on the advisability of the private placement rather than public sale? A. Not that I recall.

Q. Will you describe the difference between the work done by you in your capacity as Chairman of the Executive and Finance Committee of the North American Company, or in your previous position of president, in connection with the applicant's financing and with that done by you in connection with the North American Company's subsidiaries?

A. Either as president or Chairman of the Executive and Finance Committee of the North American Company, I have not participated in any discussions or negotiations with respect to financing of the Pacific Gas and Electric Company.

Q. Whereas you have had a very active part

(Testimony of James Fogarty.)

in such matters with reference to North American Company subsidiaries? A. That is correct.

Q. Could you say what percentage of the gross income of the North American Company is represented by the dividends received from its holdings of applicant's common stock, for any particular year, like 1939?

A. Dividends on North American holdings *or* Pacific Gas and Electric Company's common stock represent perhaps 25 percent, or 20 percent, of the North American Company's corporate gross income.

[1563]

Mr. Phleger: Excuse me, on a consolidated basis?

The Witness: That is why I said corporate.

By Miss Calkin:

Q. Does North American have debentures outstanding? A. Yes.

Q. Without the receipt of dividends from the applicant, could the North American Company meet its fixed charges? A. Yes, indeed.

Q. Could it meet its preferred stock dividend requirements? A. Yes.

Q. Would you say that the relationship which you have stated has existed between the North American Company and the applicant in the past was due primarily to the fact that applicant's business has enjoyed a normal growth and has progressed in a satisfactory manner? A. Yes.

Q. You would not say, would you, Mr. Fogarty,

(Testimony of James Fogarty.)

that North American would not take a more active part in the affairs of the applicant in which it has an investment representing the market value or approximately $60.-odd million, if conditions changed in such a manner that earnings were materially decreased and its ability to pay dividends on its common stock seriously threatened?

A. I don't think a drop in earnings of the Pacific [1564] Gas and Electric Company, or a change in its dividends, would be warrant for taking any active part in its management. If some conditions were to develop which were the result of improper or incompetent management, it would be an entirely different situation.

Q. And in what manner would the situation be different? I mean, to what extent would the contacts which you have had in the past with the applicant be changed?

A. Why, I think that if such a condition as I have just referred to were to arise, I think we would examine pretty closely into the matter, discuss it with the local Board of Directors, and develop some thought as to how such a situation could be corrected or improved.

Q. In other words, it would be a fair statement to say that if the applicant's affairs had not progressed as they have in the past, the North American Company would probably have taken a more active part in the affairs of the applicant than it has?

(Testimony of James Fogarty.)

A. No, I would not say that. The statement I made as to what action the North American Company might take had to do with a set of circumstances which would indicate improper or incompetent management, and the company's earnings could fail to progress without such a condition developing. [1565]

Q. If the North American people should reach the conclusion that the management of the applicant were incompetent, what action would it take?

A. We would discuss the question with the directors of the company.

Q. If such a situation arose, would you and Mr. Freeman take a more active part in the directors' meeting than you had in the past, Mr. Fogarty?

A. Yes, I believe we would, until the situation had been corrected at least.

Q. I believe the record shows that neither you nor Mr. Freeman have ever attended any meetings of applicant's Board of Directors. Why have you felt your attendance at such meetings was not necessary in view of the substantial investment of the North American in the applicant?

A. Well, the position of the company was a strong one. Its credit was good. The rates were low. Public relations were good. The company was well operated. In general, the situation did not seem to require any more attention from us.

Q. As directors at least you would become more active if any of those situations changed?

(Testimony of James Fogarty.)

A. Well, we would make inquiry as to the cause of such changes that took place, and upon the nature of those questions would depend the action we would take. [1566]

Q. If a situation arose in the affairs of the applicant which led you to the conclusion that the applicant would be benefited by the North American Company exerting a controlling influence over its affairs, would you take such steps as in your opinion were necessary to result in the exercise of such controlling influence?

A. Well, we would submit those views to the management and directors, and whether or not any action that would be based on those views would be taken would depend entirely upon the acquiescence and support of the management and directors of the company.

Q. But if the managers and directors of the company differed—if there arose a sharp difference of opinion between you and the management and directors on a particular matter, what steps would you take to oust the management?

A. I don't know that under those circumstances we could take steps to oust the management. But whatever action we would take would depend upon the circumstances that gave rise to that. It is extremely difficult to answer such a hypothetical question.

Q. Was the relationship between the North

(Testimony of James Fogarty.)

American Company and Pacific Gas & Electric Company at all times harmonious?

A. So far as I know. [1567]

Q. And the same has been true during Mr. Hockenbeamer's and Mr. Black's connection?

A. Yes.

Q. And there has been no sharp difference of opinion between Mr. Hockenbeamer and Mr. Black since the North American Company has had a substantial interest in the applicant?

A. No, except that one episode concerning the reduction of dividend.

Q. But that was never brought to a sharp issue. You made a request, as I understand it, that the dividend reduction be considered and when that request had been ignored, you did not push the matter any further.

A. I would say it was something more than a request. I think Mr. Dame and Mr. Black probably explained pretty clearly to Mr. Hockenbeamer the North American Company's feeling about the matter.

Q. But neither you nor Mr. Freeman went out and attended the Board meeting to express your views at a Board meeting?

A. No, neither of us was a director at that time.

Q. You do not recall that Mr. Earle was instructed at that time to make any particular complaint?

(Testimony of James Fogarty.)

A. If I recall correctly, the matter was brought up by the Executive Committee or the Board, and I believe by Mr. Earle. But that didn't alter the situation. [1568]

The Examiner: He brought the matter up with the Board of the applicant, the Executive Committee of the applicant, P. G. & E.?

The Witness: Yes, of the applicant.

By Miss Calkin:

Q. It is your best judgment that the question of reduction of dividends was reconsidered by the Board at the request of North American Company?

A. It is my recollection that the matter was brought up by the Board. Whether the directors decided they would reconsider it, and then decided after such reconsideration to allow the reduction to stand, or whether they felt at the time they had so fully considered the matter as to not reconsider it, I would not know.

Q. I believe on direct examination you testified that in your opinion North American Company had not at any time in the past exercised any controlling influence over the management or policies of the applicant. Upon what facts do you base such an opinion?

A. Because I know of no action that the North American Company has ever taken with regard to Pacific Gas & Electric Company which would constitute an act of management or of supervision and

(Testimony of James Fogarty.)

direction of the management of the Pacific Gas & Electric Company.

Q. I believe it is your testimony that at no time [1569] with the exception of the dividend matter, has the North American Company recommended concretely and definitely that certain action be taken by the Pacific Gas & Electric Company in respect to any matters.

A. Not to the best of my recollection.

Q. And during the approximately ten year period that it has had a substantial investment in the applicant, it has not followed a policy of making suggestions and recommendations with regard to either major or minor problems concerning the applicant's management. A. That is correct.

Q. And it is your testimony, then, that the North American Company has not at any time, in any manner, supervised the affairs of the applicant.

A. That is correct.

Q. And your contact with applicant's representatives has been in the nature of getting information to determine the value of your investment and its status and things of that nature, rather than in making the contact which resulted in your making suggestions and recommendations as to what applicant should do. A. That is correct.

Q. Mr. Fogarty, do you recall that Mr. Miller was in New York at the time the dividends were reduced, and called you or some other representative of the North American Company [1570] and

(Testimony of James Fogarty.)

requested that you join him in a request for the Board to reconsider reduction of the dividends?

A. I do not recall specifically that Mr. Miller was in New York, but he probably was because I have a recollection that Mr. Dame and Mr. Black discussed the matter with him.

Q. You stated that you had only made one business trip to California, and you have been there on several occasions. Were your other trips on vacations?

A. Yes, I would say principally so.

Q. Did you pay your own expenses on those trips? A. I did.

Q. They were not paid by the North American Company? A. No, they were not.

Q. So that you did not go out and look over the applicant's properties primarily—that was not primarily what you went for?

A. Yes, and any information that the North American Company got as the result of any discussions I have had on those trips, the North American Company have gotten without expense.

The Examiner: Except in so far as you are paid a salary for looking after the company's interests.

The Witness: Yes.

By Miss Calkin: [1571]

Q. After your first conversation with Mr. Miller concerning Mr. Black's presidency, did you take the matter up with Mr. Williams?

(Testimony of James Fogarty.)

A. No, I did not.

Q. Was he in the city at that time, do you recall?

A. I do not recall. He may have been, but I undoubtedly discussed the matter with him before Mr. Black went out there. But when you ask the question as to whether I took the matter up with him, you mean——

Q. I mean before you advised Mr. Miller he was, in effect, free to go ahead and discuss the matter with Mr. Black?

A. No, I do not recall that I did.

Q. You testified on direct examination, since Mr. Black has been President of the company you discussed with him such matters as rate reductions, proposed refundings, and other matters; did those discussions, generally speaking, occur prior to the time definitive action was taken thereon by applicant's Board, and did Mr. Black seek your advice, or was he simply talking with you about the problems that were before the Board at that particular time?

A. In connection with the gas rate litigation, it is my recollection he told me that a proposal was going to be made to the Board that it be settled on the contemplated basis, and I felt he was advising me as a director of a [1572] matter that was going to come before the Board. Any discussion concerning financing had to do with conditions in the bond market, in the course of which he may

(Testimony of James Fogarty.)

have mentioned he was making a survey, possibly looking toward a refunding or a financing.

Q. You testified, I believe, Mr. Fogarty, no representatives of the North American Company had ever been present at a stockholders' meeting of the applicant. Did you mean that neither yourself nor Mr. Freeman—I mean, none of the North American representatives—or did you mean to include Mr. Earle in that statement?

A. No, I was not thinking of Mr. Earle at the time and I do not recall that he attended any stockholders' meetings; but I was thinking particularly of the officers of the North American Company.

Q. You let the question of Mr. Earle's successor on the Executive Committee lapse because you did not deem it was of sufficient importance to North American's interest to have a successor appointed?

A. Yes. Apparently the matter went on. Nothing was done about it. And I do not recall that that was a matter of a particular division.

Q. I think that vacancy was later filled by Mr. Palmer. Did Mr. Black ever discuss with you the placing of Mr. Palmer on the Executive Committee?

A. I don't recall that Mr. Black discussed a particu- [1573] lar individual—discussed with me the question of a particular individual becoming a member of the Executive Committee, but I do believe that Mr. Black and I discussed the question of the North American officers being on the Execu-

(Testimony of James Fogarty.)

tive Committee. That is my recollection. And I know my feeling would have been that with a small body such as an Executive Committee it would not have served any useful purpose to have a member who lived three thousand miles away on the Committee.

Q. Did Mr. Black take up with you the selection of Mr. Livermore to serve on the Executive Committee?

A. No. I do not recall that Mr. Black discussed with me the appointment of any particular individual to the Executive Committee.

Miss Calkin: I think that is all.

Redirect Examination

By Mr. Phleger:

Q. Mr. Fogarty, you have been asked at various times, and in various forms, as to whether or not you recall whether your lack of activity as a director had been due to the fact that the company has been prosperous and well managed. And that has been followed by a question as to whether in the event that the company was not well managed, in your opinion, whether you would then take a more active interest, to which, if I recall, your answer was yes. Would that in- [1574] creased activity on your part and on the part of Mr. Freeman as directors of Pacific Gas & Electric Company representing the North American, be anything other than would be expected as directors?

(Testimony of James Fogarty.)

A. No, I feel that Mr. Freeman and I as directors of the company represent all of the stockholders. And we would have to consider the interests of our stockholders in any action that we as directors would take.

Q. And this increased activity of yours would be merely increased activity as directors in the way of attending meetings and discussing the company's affairs with others, would it not?

A. Yes, and looking toward correcting the situation which had developed.

Q. Yes, correcting it by inducing the other directors to join with you in some corporate action which you felt would be advantageous to the applicant. A. That's right.

Q. And as such, advantageous to all stockholders including the North American Company.

A. That's right.

Q. Did you contemplate any other, or different, form of action? A. No, indeed.

Q. Now, with respect to increased activity by North [1575] American as a stockholder, would that increased activity be anything different than normal stockholders' activity with respect to proper management of the company in which they had an investment?

A. No, it would not. Instead of increased activity, I think it might be more properly described as an action taken at the time because of conditions which then existed, if they did become existent.

(Testimony of James Fogarty.)

Q. Your increased activity, Mr. Fogarty, would not be any different than the activity which Mr. John D. McKee, as a director, might take, would it? A. No, it would not.

Q. It would be an endeavor as a director of Pacific Gas & Electric Company to so exercise your powers as such a director as to produce the maximum in the way of good management for the company?

A. It would be the kind of activity in which I would engage if I were director of any corporation.

Q. And the same thing is true of your stock interest and your activity as a stockholder, would it not be? A. That is correct.

Q. So that it would be fair to say, would it not, Mr. Fogarty, that your activity under those circumstances would be just like the activity of any other individual member of the Board of Directors of the company, or any other [1576] individual stockholder? A. That's right.

Q. For instance, if I owned one hundred shares of stock of P. G. & E. and I felt the management was a bad one, and I proceeded to try and carry that message up to the stockholders as a whole for the purpose of correcting that management, my activity would be no different in kind than the North American's increased activity would be, would it? A. No, it would not.

(Testimony of James Fogarty.)

Q. And any influence which the North American Company might have as a stockholder along that line would be no greater than the merit of its criticism, would it? A. That is true.

Q. And the same criticism in the mouth of a holder of a thousand shares resident in California you would assume would have the same effect, would it not? A. Yes, I think it would.

Q. And the same thing is true with respect to any increased activity of a director if you, as a director, feel that the management was wrong, your attitude with respect to that and your desire to correct it would be no more than the influence of an informed director carrying the message to the rest of the directors. A. That's right. [1577]

Q. And any power and authority that you might have in either the position of director or stockholder would be merely one of conveying information, and the message, if I might call it such, to the others similarly situated with yourself, with the idea you could convince them that a certain particular action would be in the interest of all the stockholders of the Pacific Gas & Electric Company? A. Yes.

Q. Is that a fair statement? A. It is.

Mr. Phleger: I think that is all.

The Examiner: Any further recross examination?

Miss Calkin: Just a couple of questions.

(Testimony of James Fogarty.)

Recross Examination

By Miss Calkin:

Q. In the event, Mr. Fogarty, that something came to your attention which you felt reflected poor management, or the execution of unwise policies in reference to the applicant, would you not first take the matter up with Mr. Black?

A. Yes, of course.

Q. And you would not submit the matter to and make an issue of it before the Board of Directors until Mr. Black had refused to take such steps to correct the situation as you felt might be advisable? [1578]

A. I should not think it desirable that a matter should be taken up before the Board of Directors until all facts had been developed, and if a situation had developed or occurred which required correction, and the management did not or would not take steps to correct it, then I think that the procedure would be to take the matter up with the directors of the company.

Q. Don't you feel, Mr. Fogarty, or rather, wouldn't you expect that a suggestion made by you or by Mr. Freeman as directors of the North American Company would carry greater weight and receive more consideration than a similar suggestion or recommendation made by small stockholders, particularly in view of the fact that the North American Company has been engaged in

(Testimony of James Fogarty.)

the utility business for the last approximately fifty years?

A. Well, it may be that because of the activity of the North American Company in the utility field, that the matter might be considered one to which attention should be promptly given, but the fact that the suggestional recommendation came from the North American Company, I do not believe would be a determining factor in its acceptance. I think the merit of the suggestion or recommendation would be the sole answer to that.

Q. But you do feel, do you not, that if a complaint came from you to the management, it might well be given [1579] more consideration and more immediate attention than if it came from some very small stockholder residing in the company's territory, or outside of the company's territory?

A. No. I would say if there was any difference it would not be in the form of more consideration. Being a suggestion that came from a large stockholder and through a member of the Board of Directors, it might be brought to the attention of the Board more promptly in an informal way, perhaps. But the amount of consideration that it would be given, it does not seem to me would be greater or less because of its source.

Q. Wouldn't you expect that if Mr. John Smith called Mr. Black on the telephone from Sacramento and said, "I hold ten shares of the stock of your company and I don't like a particular action which

(Testimony of James Fogarty.)

was taken by the Board at a particular time," Mr. Black would not give that protest the consideration he would give if you made a similar call and a similar complaint?

A. I think that would depend on the circumstances. If Mr. John Smith advanced good, sound reason for his objection to the action of which he was complaining, I am sure that he would receive consideration.

Q. Did you, as President of the North American Company, give the same consideration to the complaints of [1580] holders of ten shares of stock as you gave to the complaints or suggestions of your large stockholders? A. Yes, we have.

Mr. Phleger: If the ten shares stockholder in Sacramento were to say, "Mr. Black, I think the policy which the P. G. & E. is maintaining with respect to the City of Sacramento is rotten," do you think he would give as much attention to that suggestion as if you telephoned from New York and said you thought the public policy in Sacramento was poor?

The Witness: I think he would feel that the man in Sacramento was very much better qualified to have an opinion about it.

By Miss Calkin:

Q. You do not mean to convey the impression, do you, Mr. Fogarty, that the North American Company could not, if it chose, exercise a greater

(Testimony of James Fogarty.)

influence over the management of the applicant than it could exercise if its holdings were substantially less than they are now, or were those other stockholders?

A. I do not think that the degree of influence of the North American Company over the Pacific Gas & Electric Company is any greater than it would be if their holdings were considerably smaller than they are.

Q. If your holdings were considerably smaller, it [1581] is very possible that you would not be entitled to two members or three representatives on the applicant's Board. You might not even have any representation on the applicant's Board, that is true, is it not? A. Yes, that is true.

Q. Then, in that sense, at any rate, you would not be in a position to exercise the controlling influence over applicant's affairs that you can exercise in view of the fact that you have very large holdings.

A. The difference is that the officer of the North American Company being a director of the Pacific Gas & Electric Company has a voice in its affairs as a director, whereas a small stockholder, not being a director, would not be in that position, and naturally the affairs of the company being managed by the Board and two officers of the North American Company being directors and participating in that capacity as directors, are in a different position

(Testimony of James Fogarty.)

from a small stockholder who is not a director.

[1582]

Q. So the representation by the North American Company of applicant's Board does put North American Company in a position to acquaint the Board not only with its views, but to take whatever steps it deems necessary to influence the other directors in the formulation of the policies of the applicant?

A. Yes, but no more so than any other director, where he owned a hundred shares, or no stock at all would have.

Redirect Examination

By Mr. Phleger:

Q. Mr. Fogarty, do you believe that you and Mr. Freeman, as two directors out of fifteen in the Board of Pacific Gas and Electric Company, have any more influence or prestige or standing than any other two directors out of the fifteen?

A. No, I do not.

Q. As a matter of fact, you probably have less than some groups that I could name, don't you think?

A. Well, it might very well be, because of the long reputation of the Pacific Gas & Electric Company for being an independent company, a California company, largely owned in California, and managed by a Board of Directors consisting of Californians, I think in the case of the Pacific

(Testimony of James Fogarty.)

Gas and Electric Company, the situation is not that which might prevail generally in the case of a company having a large stock interest. [1583]

Q. If a meeting of the directors was held and a matter was up for consideration and you and Mr. Freeman were on one side and Mr. C. O. G. Miller and Mr. John D. McKee were on the other side, would you say that you and Mr. Freeman would have any greater influence with the Board than those two?

A. No, I think the degree of influence would depend on the merits of the case.

Q. Exactly. That the Boards would act as individual directors exercising their best judgment for the benefit of all the stockholders of the company. Is that about right? A. Yes.

Recross Examination

By Miss Calkin:

Q. But if there were no difference of opinion and you and Mr. Freeman attended Board meetings of the applicant regularly, you would be in a position, by virtue of being directors of the applicant, to very possibly alter the views of the meeting on any particular question which was up at that meeting?

A. We would be in a position to present our views, and if the other directors felt that those views were sufficiently meritorious, I assume that they would agree, but, then, that would be true if we

(Testimony of James Fogarty.)

were two directors of the company and had no connection at all with the North American [1584] Company.

Mr. Phleger: Did you ever hear the story of the flea that was sitting on the back of a great coach in France, and as the coach proceeded to run along the road, said, "Oh, what a great cloud of dust I raise!"

Q. Mr. Fogarty, the fact that you happened to agree with the rest of the directors would not lead to the conclusion on your part, would it, that you were controlling or directing the others?

A. Indeed not.

Q. You were just going in the same direction at the same time? A. Yes.

By Miss Calkin:

Q. But your opinions might influence the officers of the Board if they were expressed at that meeting?

A. It depends on what those opinions were, of course.

(Discussion off the record.)

The Examiner: We will recess now until ten o'clock tomorrow morning.

(Whereupon, at 5:00 o'clock p. m., the hearing was adjourned until January 16, 1941, at ten o'clock a. m.) [1585]

Proceedings

The Examiner: Proceed.

Mr. Phleger: Will you take the stand, Mr. Freeman?

Whereupon:

HERBERT C. FREEMAN

called as a witness by and on behalf of the Applicant, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. Freeman, where do you reside?

A. At 960 North Broadway, Yonkers, N. Y.

Q. What is your occupation?

A. I am a Vice-president of the North American Company.

Q. How long have you been associated with the North American Company?

A. Since July, 1927.

Q. What was your occupation prior to that date?

A. From 1902 until 1920 I was engaged in public accounting. I was a partner of the firm of Touche, Niven & Company. From the beginning of 1921 until April, 1927, I was Vice-president and General Manager, and later President of the National Cloak & Suit Company, a mail order business located here in New York.

(Testimony of Herbert C. Freeman.)

Q. Since 1927, you have been continuously with the North American Company? [1587]

A. Yes, sir.

Q. In what capacities have you served with the North American Company?

A. For the whole time I have been Vice-president and Director, and a member of the Executive Committee, and later the Executive and Finance Committee.

Q. And what, generally, are your duties with the company?

A. They are quite broad. Of course, on account of my previous accounting training, I perhaps get more into the matters of accounting that affect the Company and its subsidiaries. I also have a good deal to do with their financing, with any contracts that come up for discussion—general matter of policy.

I have had a good deal to do with the matters affecting the subsidiaries, other than the public utilities. I have also been a director of Wisconsin Electric Power and Cleveland Electric Illuminating, and for part of the time of the Washington Railway and Electric, and I have kept in touch with their affairs.

And since 1936, I believe it is, I have been a director of Pacific Gas and Electric, and have watched its accounts.

Q. Mr. Freeman, have you any connection, any business connection, with any firms or corporations

(Testimony of Herbert C. Freeman.)

other than North American Company, or companies in which it has stock holdings? [1588]

A. Businesses—I don't quite follow you. You mean businesses which are not subsidiaries of North American, but in which North American has holdings?

Q. Yes. Have you any business connection with any companies other than those which North American has interests in? A. No.

Q. Do you own any stock in the Pacific Gas and Electric Company?

A. No, sir. I have qualifying shares which belong to the North American Company.

Q. When did you become a director of the Pacific Gas and Electric Company?

A. I am sorry; I can't recall the exact date. I should have looked it up. It was——

Q. Would December 16, 1936, appear to you to be about right?

A. That sounds—it was some time in 1936.

Q. Yes. Whom did you succeed as a director?

A. I believe I succeeded Mr. Doolittle.

Q. And Mr. Doolittle was Vice-president of the North American Company, was he?

A. Yes, sir.

Q. And he retired from active service with it at or about the time that you became a director in Pacific Gas and [1589] Electric Company?

A. Yes, sir.

(Testimony of Herbert C. Freeman.)

Q. Do you know Mr. D. H. Foote?

A. No, I don't believe I have ever met Mr. Foote.

Q. Do you know Mr. C. O. G. Miller?

A. No, sir.

Q. Do you know Mr. John D. McKee?

A. No, sir.

Q. Do you know Mr. Norman B. Livermore?

A. No, sir.

Q. Do you know Mr. Allen L. Chickering?

A. I have met Mr. Chickering on one occasion, when he was in New York. He was passing through New York, and he made more or less a social call on us.

Q. And that is the only occasion on which you have ever seen or corresponded with him?

A. Yes, sir.

Q. Do you know Mr. Paul M. Downing?

A. Yes, I have met Mr. Downing on two or three occasions when he had been in New York.

Q. Were those social or business calls?

A. They were more of a nature of social calls than business calls, as far as we were concerned. He came in to see us because he was in New York.

Q. Yes. [1590] A. On other matters.

Q. Did you discuss P. G. & E. affairs with him other than in a cursory way? A. No.

Q. Do you know Mr. Frank P. Coghlan?

A. Yes, I have met Mr. Coghlan.

Q. How often, and where?

(Testimony of Herbert C. Freeman.)

A. On one or two occasions, when he had been in New York, in just the same way as Mr. Downing.

Q. I see. Do you know Mr. Charles K. McIntosh? A. No, sir.

Q. Did you know Mr. Frank B. Anderson in his lifetime? A. No, sir.

Q. Do you know Mr. Silas H. Palmer?

A. No, sir.

Q. Do you know William W. Crocker?

A. No, sir.

Q. Did you know Henry D. Nichols?

A. No, sir.

Q. As to these gentlemen whom you say you don't know, I take it by that answer you mean you have never met them, nor had correspondence with them; is that a true statement?

A. That is true, yes, sir.

Q. Do you know Mr. A. E. Wishon?

A. Yes, I have met Mr. Wishon several times—I think [1591] once or twice since 1930, when his company was acquired by the Pacific Gas and Electric Company. I had also met him prior to that, when he was an officer of the whole Western Power and subsidiaries.

Q. Have you ever attended a meeting of the Board of Directors of the Pacific Gas and Electric Company? A. No, sir.

Q. Have you ever been in California?

A No, sir.

(Testimony of Herbert C. Freeman.)

Q. Have you ever suggested the name of or participated in the election or selection of any director or officer of the Pacific Gas and Electric Company? A. No, sir.

Q. Do you know Mr. James B. Black?

A. Yes.

Q. How long have you known him?

A. Since I became Vice-president of the North American Company. He was at that time a Vice-president.

Q. You came with the North American shortly after he did; is that right? A. Yes, sir.

Q. Is he connected with the North American Company now? A. No, sir.

Q. When did he sever his connection with it?

A. The latter part of 1935, following the death of [1592] Mr. Hochenbeamer.

Q. At the time of his selection as President of the Pacific Gas and Electric Company?

A. Yes.

Q. Has he any connection now with the North American Company? A. No, sir.

Q. Has he had any connection with the North American Company since he became President of the P. G. & E.? A. No, sir.

Q. During the time that Western Power Corporation held the majority ownership, or ownership of the majority of the outstanding stocks of Great Western Power Company and San Joaquin Light

(Testimony of Herbert C. Freeman.)

& Power Corporation, and the Midland Counties Company, were you closely in touch with the affairs of those latter companies?

A. Fairly closely. I would say in substantially the same way as I am now with the affairs of the various subsidiaries of the North American Company. Q. I see.

A. It was not—I was not primarily charged with following their affairs, but I did keep in touch with them.

Q. Yes. Those companies, up until the time that the stock which the Western Power Corporation held in them in 1930—were treated in the same manner as other North [1593] American subsidiaries were treated at that time, were they not?

A. Yes.

Q. Will you describe generally what supervision or advisory services were performed by North American for the Great Western and San Joaquin Companies following the time you came with the North American Company, and up until 1930, when it disposed of its interest in those companies to the Pacific Gas and Electric Company?

A. We advised with them whenever necessary on matters of financing. We discussed with them their construction budgets, any major projects. We kept in touch with them in connection with rates. I don't know to what extent there were any changes in their management organizations there; I don't

(Testimony of Herbert C. Freeman.)

recall. But those would be matters in which we would keep closely in touch with them.

On matters affecting their public relations, their relations with the State Commission, we would keep in touch with them. We supervised, at long range, of course, the preparation of their annual reports. We had drafts of their annual reports, went over them.

The only reports which I recall at that time they had to make to any Federal bodies were the questionnaires of the Federal Trade Commission, and I personally supervised that.

They prepared the reports, and sent them to me in New [1594]York, and I had correspondence, discussion with them of those reports. I think that is about the extent of it.

Q. Is it a fact that during that period no major transaction occurred on the part of those companies without the matter being first submitted to the North American Company for its advice or recommendation? A. That is a correct statement.

Q. Now, with respect to accounting matters, were the accounts of those companies generally supervised by the North American Company?

A. Only as to matters of principle, because their accounts are subject to control of the California Commission, and it would only be matters over which the company had any control from the point of view of policy that we should be consulted.

(Testimony of Herbert C. Freeman.)

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(Testimony of Herbert C. Freeman.)

Q. They followed, did they not, in their general accounting practices in those respects which were not prescribed by regulatory bodies the general form and rules followed by all North American subsidiaries?

A. I could hardly say that we had any general forms or rules as applied to any of our subsidiaries, except that we did ask them to report to us monthly on certain uniform rules, so that we could have a monthly report on all of our subsidiaries in more or less uniform shape.

Q. Was the material that was collected in that matter [1595] again redistributed among the various subsidiaries, including these companies, in order that they might have comparative experience with other subsidiary companies?

A. Not the purely accounting reports, but reports of operating costs, production costs, and certain other details of operating costs, which could be expressed in statistical form, were first reported to us and then distributed in comparative form to our subsidiaries for their information.

Q. And those reports were both submitted by these particular subsidiaries and in return the comparative material was forwarded to them for their advice; is that correct?

A. I am quite sure that that happened. I haven't looked specifically to see whether they were included.

(Testimony of Herbert C. Freeman.)

Q. Did the North American Company, during that period, furnish tax advisory service to these subsidiaries?

A. As to Federal taxes, income taxes, and matters of that kind, yes. [1596]

Q. With respect to financial matters, were the negotiations for the issue and sale of securities of these subsidiaries conducted by the North American during this period?

A. Yes, to the extent that there were any such transactions. During the large part of that period, however, they financed their expansion in the form of loans, so their occasions for going to the market for money were not very numerous, although they were spending a great deal of money.

Q. I think the record shows that there were some bonds of the San Joaquin Light & Power Corporation sold during that period. You have specific recollection of that?

A. I know about it. I am inclined to think that that was prior to 1927. My recollection on that is not quite clear. I knew about it, but if it happened after 1927, Mr. Black, I think, would have had more to do with it than I had.

Q. But if it happened during that period, it was conducted by the North American Company; was it not? in behalf of subsidiaries?

A. Oh, yes.

Q. With respect to rate matters, what services, if any, were furnished to the subsidiaries by the North [1597] American Company?

(Testimony of Herbert C. Freeman.)

A. I would say general advisory service. I do not recall any detailed routine service that was rendered. It would only be in connection with proposed rate changes.

Q. Those would be submitted, would they not, to the North American Company? A. Yes, sir.

Q. In advance of being put into effect?

A. Yes, sir.

Q. Was any service rendered in connection with sale or promotion matters?

A. I would say in a very general way. At that time we had no officer who was specifically charged with that duty. Mr. Black, however, would have kept in touch with it, based on his experience.

Q. Do you know whether or not the officers of these subsidiaries were members of and anticipated in what is known as the Station Advisory Committee?

A. I cannot answer that from my own knowledge. I think they did participate, but I am not—I would not be able to answer that specifically.

Q. Did these companies, during this period, have the benefit of your North American group purchase contract? A. Yes.

Q. Did these companies maintain at the office of the [1598] North American Company in New York transfer and secretarial offices?

A. I believe they did. I cannot say specifically whether we handled their transfer work.

(Testimony of Herbert C. Freeman.)

Q. Did the North American charge the subsidiaries for the services rendered them by the North American Company?

A. We had a method at that time of apportioning the costs of certain of our departments over our subsidiaries, and the North American Company upon a rough approximation of the time spent for the different companies, and it is my recollection that the Western Power properties bore their share of that. Certain of our officers were also officers of subsidiary companies, and those companies paid salaries for those officers to the North American Company, or to those officers who, in turn, turned them over to the North American Company, and I believe there were certain of our officers served in that capacity for the Western Power properties.

Q. When did these services which the North American rendered to the Great Western, San Joaquin, and Midland Counties terminate?

A. They terminated in 1930, at the time of the transfer of those properties to the Pacific Gas & Electric.

Q. Did you receive any payment from the Pacific Gas & [1599] Electric Company for your services as a director, or otherwise? A. No, sir.

Q. Does Mr. Fogarty receive any payment from it? A. No, sir.

Q. As a director, or otherwise?

A. No, sir.

(Testimony of Herbert C. Freeman.)

Q. Do you know anything about the circumstances surrounding an election or selection of Mr. Black as President of the Pacific Gas & Electric Company?

A. I didn't personally participate in the discussions of that with anybody in California, but I was kept advised from time to time of what transpired.

Q. You know nothing of your own knowledge?

A. No.

Q. Do you consider Mr. Black a North American representative? A. No, sir.

Q. You receive, as a director of Pacific Gas & Electric Company, certain reports, do you not, from that company? A. Yes.

Q. I show you applicant's exhibit number 33. Does that exhibit show typical forms of the reports which are sent to you periodically (handing bulletin to witness).

A. All of the forms that are here are typical forms. [1600] The income statements and the balance sheets that we receive are not here.

Q. It is noted that they are not but they are?

A. Yes. It is noted. We receive those monthly in the form that I understand they are submitted to the Board and the Executive Committee.

Q. What do you do with those reports when you receive them?

A. I look them over, notice any changes. Occasionally, I would say very occasionally, I am asked for some information on some points and then they

(Testimony of Herbert C. Freeman.)

are sent to anybody else in the office who may be interested, and filed.

Q. How frequently do you communicate with the Pacific Gas & Electric Company, or any of its officers or employees?

A. Very infrequently, I would say not more than a half-dozen times a year, perhaps.

Q. Do you have any telephone communication with them?

A. I don't recall ever having initiated a telephone call. There have been one or two occasions when Mr. Black has spoken to me when Mr. Fogarty was not in.

Q. What has the subject matter of those conversations been?

A. My recollection is that they were to advise us of arrangements that he had made for financing. I don't recall any others. [1601]

Q. To tell you that they had, or were about to sell some securities? A. Yes.

Q. Would you state generally what the subject matter of your correspondence has been?

A. I think it is limited entirely, or almost entirely, to matters that were developed out of the reports. I have inquired about their cash working capital; I have inquired about the water situation. Once or twice I have asked them the reason for certain changes in their expenses, as I remember it, particularly, the general commercial expenses.

(Testimony of Herbert C. Freeman.)

Q. Were they all requests for information on your part arising out of questions which came to your mind after examining these reports?

A. Yes, as to these reports, they have been entirely of that character. I think in connection with the annual reports I have made at least one suggestion. I do not recall others, as to the form of the report.

Q. You wrote Mr. Black once, suggesting that you thought it would be better to put the income account before the balance sheet. Is that the situation?

A. I remember that, yes, it was purely a matter of presentation. Hadn't anything to do with the substance of the report.

Q. Is the draft of the annual report of the company [1602] submitted to you before it is printed and sent out?

A. No, it is sent to us before it is printed and sent out, but I don't think we ever had a chance to get in any comments before it was actually printed.

Q. So that, as a practical matter, you are really not consulted in connection with the preparation of that report?

A. I think that is a fair statement.

Q. Have you attempted to influence or control in any way the management, policy, or actions of the Pacific Gas & Electric Company?

(Testimony of Herbert C. Freeman.)

A. No, sir.

Q. Do you know of any attempt on the part of the North American Company, or any of its officers, to influence or control the management, policy, or actions of the Pacific Gas & Electric Company?

A. No, sir.

Q. Are the management or the policies of the Pacific Gas & Electric Company subject to a controlling influence, either directly or indirectly, by the North American Company? A. No, sir.

Q. Does the North American Company control the Pacific Gas & Electric directly or indirectly?

A. No, sir.

Q. Are you the officer who, on behalf of the North [1603] American Company, signs and returns the proxy for the stockholders' meetings of the Pacific Gas & Electric Company?

A. I don't know whether I have invariably done it. I think probably I have.

Q. Have you any particular recollection of the circumstances surrounding which that is done?

A. No, there has been nothing to make it register with me particularly. It has been a matter of normal procedure. We have had no reason to register any particular feeling one way or the other about it.

Q. To the best of your recollection, you simply get the regular proxy and sign it and return it?

A. Yes, we look to see that the directors representing the North American Company are included

(Testimony of Herbert C. Freeman.)

in the slate for the election, but, otherwise—I can go further than that—we look to see whether the slate is the same as it was previously, but, other than that, I don't think we have ever had occasion to raise any question with regard to a proxy statement.

Q. Has the Pacific Gas & Electric Company ever borrowed money from the North American Company? A. No, sir.

Q. Has the North American ever borrowed any money from the Pacific Gas & Electric Company?

[1604]

Q. Has the Pacific Gas & Electric Company, with the exception of the transaction when it acquired the properties, ever had any business transactions with the North American Company?

A. I believe not. I have no recollection of any.

Q. Are there any outstanding contracts, or agreements, between the North American Company and the Pacific Gas & Electric Company?

A. No, sir.

Q. Has there ever been any such, to your knowledge, with the exception of the 1930 transaction?

A. No, sir.

Q. Do you know who the attorneys for the Pacific Gas & Electric Company are?

A. At the moment, I cannot recall their names.

Q. Do you know who the accountants of the Pacific Gas & Electric Company are?

(Testimony of Herbert C. Freeman.)

A. Haskins & Sells.

Q. Are they the accountants for the North American Company? A. No, sir.

The Examiner: What was the answer?

The Witness: No, sir.

Mr. Phleger: I think that is all.

Miss Calkin: May we have a short recess? [1605]

The Examiner: We will take a short recess.

(Whereupon, a short recess was taken.)

After Recess

The Examiner: Are you ready for cross examination, Miss Calkin?

Miss Calkin: Yes.

The Examiner: You had completed your direct, had you not, Mr. Phleger?

Mr. Phleger: Yes.

Cross Examination

By Miss Calkin:

Q. Mr. Freeman, did you participate in any manner in the negotiations which preceded the acquisition by the applicant of the securities of the subsidiaries of Western Power Corporation?

A. Not in the negotiations.

Q. Did you talk with anyone regarding the proposed transaction?

A. I was kept advised in New York by our own people as to what was being discussed.

Q. You never had any conversations with Mr.

(Testimony of Herbert C. Freeman.)

Hockenbeamer directly prior to the acquisition of the securities? A. No.

Q. Who carried on these negotiations on behalf of the applicant, if you know? [1606]

A. Mr. Black and Mr. Gruhl.

Q. At that time did you overhear any discussions as to the applicant's insistence that the North American Company occupy only the position of an investor in the event it acquired a substantial block of applicant's common stock?

A. I knew that was one of their—one of the points that they had in mind in the negotiations.

Q. Well, what do you know about that matter?

A. I think they—perhaps I should say feared that if we acquired such a large amount of stock, we might attempt to go further and secure control of the company; and the Board out there, I think, would have been very averse to anything of that kind, and probably would not have agreed to this transaction if they had thought that was our intention.

Q. Did Mr. Dame or Mr. Gruhl or Mr. Black state what, if anything, was told the applicant's representatives as to what the North American Company's future attitude would be toward the applicant?

A. Based on such discussions as I had in New York, I would say that the applicants were told that it was not our intention to move in and secure control.

(Testimony of Herbert C. Freeman.)

Q. Was there any discussion as to the extent to which the North American Company would participate in the [1607] affairs of the applicant?

A. I think it was always understood that we would not attempt to take any part in the management of the company.

Q. Do you know of any other situation in which the North American Company has acquired as much as 17 per cent of the voting securities of an operating utility company in which it did not seek to dominate or supervise the affairs of the operating company?

A. I think that would be true only as to Detroit.

Q. Who in the North American organization was primarily interested in the North American investment in applicant's securities during the period from 1930 to '35?

A. I did not quite catch the first part of your question.

Q. Was there anyone in the North American organization from 1930 to '35 whose primary duties were to look after the North American investment in the applicant?

A. It was Mr. Black's primary duty to do that.

Q. Then who succeeded to his duties upon his becoming president of the applicant?

A. I would say that as to accounting matters, well, let me put it this way: I would say that we, all of us, watched the thing more directly and as a matter of our primary duty, than we had done when

(Testimony of Herbert C. Freeman.)

Mr. Black was there. [1608] In accounting matters, for example, I would pay more attention now than I thought it necessary to do when Mr. Black was there. Possibly as to their financial position, Mr. Fogarty may pay more attention now than he did when Mr. Black was there, but we have always worked more or less as a team in the North American, and Mr. Black would keep us advised at all times of what was going on, but he did not attempt to keep us advised of minor points that came to his attention.

Q. You mean, that was during the time when Mr. Black was with the North American?

A. Yes.

Q. Or since then?

A. During that time. Due to his familiarity with the properties on the Coast, Mr. Black had a more intimate picture of that whole situation than anybody else in the North American system, and he did not attempt to convey that to us all of the time as to matters of detail, but he kept us advised as to all important matters in just the same way that we now have to keep ourselves advised.

Q. Is there anyone today in the North American organization that has the intimate acquaintance with the applicant's business that Mr. Black had during the time he was there?

A. No, I doubt if there is. We are none of us as [1609] much acquainted with the situation in California as Mr. Black.

(Testimony of Herbert C. Freeman.)

Q. You, yourself, have never been in California?

A. No.

Q. So that you have no first-hand knowledge of applicant's properties, or operating system?

A. No.

Q. I believe you testified, Mr. Freeman, that you never attended a meeting of applicant's directors. Why have you felt that it was not necessary that you attend such meetings?

A. It has not been a question of feeling that it was not necessary. It has simply been a matter of it not being practicable for me to attend. As a director, I would like to attend those meetings, but we are so far away and it is so hard to plan ahead to be there in a specified time to attend a meeting, that it just has not been practicable.

Q. Well, did you ever know Mr. Guy C. Earl?

A. No, I did not know him.

Q. You never met him?

A. I don't think I ever met him. If I did, it is just possible that he was in New York sometime during that period when we were interested in the Western Coast properties, but at the moment, I do not recall. If so, I [1610] just met him casually.

Q. Mr. Earl, I believe, died just a few months before Mr. Black became President of the applicant. During his lifetime did Mr. Earl correspond with you, or Mr. Fogarty, or did he carry on his correspondence with Mr. Black regarding the applicant's affairs?

(Testimony of Herbert C. Freeman.)

A. My recollection is that it was almost entirely with Mr. Black. He and Mr. Black, of course, had worked together when Mr. Black was in California and they knew one another, so it would be normal to correspond with Mr. Black. He may, for all I know, have communicated with Mr. Dame or Mr. Gruhl.

Q. Well, you knew that from the period between 1930 and 1935, the North American Company was paying Mr. Earl a salary? A. Yes.

Q. And that during that time, his own duties were to attend meetings of the Board, applicant's Board of Directors and its Executive Committee, and furnish such information as he gained from such meetings and his other contacts with the applicant to the North American Company?

A. Yes, that is all the service he rendered for that salary. Of course, Mr. Earl had been an officer of the Western Power group, and to some extent the salary we paid him was by way of not terminating his connection too abruptly. [1611]

Q. Now, when Mr. Earl died, what discussions took place relative to his successor, that is, someone that would perform the same duties for the North American Company which Mr. Earl had performed during his lifetime?

A. I think it was discussed, and I think we rather felt that while he had been keeping Mr. Black and the rest of us advised, through Mr. Black, of a great many details, we could unques-

(Testimony of Herbert C. Freeman.)

tionably get direct from the company all the essential facts that we needed to regarding our investment; and I don't think that we, any of us, felt that there was any real necessity to have anybody succeed Mr. Earl.

Q. Well, if Mr. Black had not been made president of the applicant in November of 1935, would a successor to Mr. Earl have been selected by the North American Company?

A. I don't think that would have made any difference. There was nobody that was in just the relationship to the North American Company as to the California properties that Mr. Earl was, and I doubt very much whether, if we had felt no obligation at all to Mr. Earl, we would have thought it necessary to have him occupy himself to the extent he did in sending us this information.

Q. Well, if Mr. Black had not been made president of the applicant, Mr. Freeman, would you have, in the past, attended meetings of applicant's Board of Directors?

A. I can't answer that, because there never has been [1612] a time when I could get away from New York long enough to attend a meeting, and I doubt if it would have made any difference. I don't think it would.

Q. Why has the North American Company only two representatives on applicant's Board when it was entitled to three such members, according to the oral agreement which the evidence shows was

(Testimony of Herbert C. Freeman.)

entered into between Mr. Black and Mr. Hockenbeamer in 1930?

A. Well, there was nothing, I would say, very binding about that agreement. It was a general understanding. I think the way Mr. Hockenbeamer expressed it in the statement he made to the press, was that North American was to be accorded three seats on the Board, and a member of the Executive Committee. It was simply by way of a working understanding as to how far we expected to be represented, and there was no reason, really, why we should have had three at that time, any more than two. Three directors wouldn't give us a control of the Board, and there was no purpose in our appointing another director, when he possibly might not have been able to spend any more time attending meetings.

The real purpose of our having directors on the Board is to enable us to keep advised, as directors, of our investment.

Q. But there was and is a correlation between the [1613] percentage of your voting securities, though, and your proportional representation on the Board, is there not, Mr. Freeman?

A. I think probably we could elect two directors by cumulative voting. I have never figured out whether we could elect two or not. That question has never arisen.

Q. Three directors is one-fifth of the total number of the Board, and you held approximately one-

(Testimony of Herbert C. Freeman.)

fifth of the voting securities of the applicant at that time, did you not, or still do?

A. Well, it is nearer one-sixth than one-fifth, I think. In other words,——

Q. You can't split a man in two.

A. With cumulative voting, I think we could only definitely elect two directors. We couldn't elect three. But that had nothing to do with the decision not to ask for three directors. One reason probably was that our organization in North American was being quite severely contracted, and as far as we were concerned, it would have been just as impossible for three of us to plan to be represented at the directors' meeting there as it would for two of us.

Q. But there is no——

A. When I say impossible, I mean difficult and impractical.

Q. But there had never been any question in your mind [1614] that if the North American Company wanted to have three representatives on the applicant's Board, you would be given permission to have such representation?

A. Well, I don't know. I mean, the question hasn't come up. I should think probably if we asked for it, the Board would agree that it was the understanding at the time we acquired our investment, and they would let us have three. I don't think there would be any question about it.

(Testimony of Herbert C. Freeman.)

Q. Does the fact that Mr. Black is president of the applicant make it less necessary that North American have full representation on the Board than would be true if Mr. Black were not president of the applicant?

A. I don't think that makes any difference.

Q. Who determined that North American should not insist upon its full representation on applicant's Board?

A. It was a general decision that we all came to. I don't think any individual person decided it. I think it was discussed and we decided that there was no point in asking for three members.

Q. Have you ever heard any representative of the North American Company say in substance that its representation on applicant's Board is not as necessary since Mr. Black became president as it was prior to his presidency?

A. No, I don't recall anybody having said that.

[1615]

Q. And I believe you testified on direct examination that you did not consider Mr. Black a representative of the North American Company on applicant's Board at the present time, or at any time since he has been president of the applicant?

A. No, we have never so regarded it.

Q. Have you, as a director of the applicant, ever suggested the name of any person to serve on applicant's proxy committee? A. No.

(Testimony of Herbert C. Freeman.)

Q. Has Mr. Black ever conferred with you as to who should constitute the members of this committee? A. No.

Q. Has North American Company ever solicited any proxies for the Annual Stockholders' Meetings of the applicant?

A. I don't think so. I am not quite sure if I understand your question. If the company had needed any particular vote for a meeting, and they had thought we were in a position to get a proxy for them, I think we might very well have done that; I mean, if it was a question of calling up some institution here in New York and asking them to send in their proxy. But it would have been the regular management proxy; it wouldn't have been seeking a proxy by North American. [1616]

Q. Well, do you know whether or not that has ever been—I mean, North American has ever been requested to do that by the applicant?

A. I haven't any recollection of it. I only suggested it might have happened.

Q. What discussions, if any, have you had with Mr. Black concerning the personnel of the applicant's Board?

A. When Mr. Black has been here, which has been very infrequently, he has talked to us about the men on the Board, telling us what their affiliations with the company have been, why they were selected as members of the Board. He has tried to keep us advised of things of that kind.

(Testimony of Herbert C. Freeman.)

Q. Well, now, I think the record shows that three or four members of applicant's Board have gone on the Board since Mr. Black has become president. Has Mr. Black, or did Mr. Black, confer with you regarding the selection of men to fill the vacancies which those men were selected to fill?

A. No.

Q. He never discussed with you the selection of Mr. Palmer or Mr. McIntosh or Mr. Nichols as directors? A. No.

Q. Do you know whether or not he conferred with any other representatives of the North American Company regarding men to fill those vacancies?

[1617]

A. Not to my knowledge. I think I should have known if he had.

Q. How does the North American Company advise the applicant who it desires to represent it on the applicant's Board?

A. I think when there have been changes, as for example, when Mr. Doolittle retired from North American Company, they were advised, either directly by letter by telephone, I don't know which, but when it comes to reelecting the Board, we assume that our representatives will be included in the slate and we see that they are. The question has never come up, and, of course, there haven't been many changes since Mr. Black has been out there. Mr. Hockenbeamer, I am quite sure, would have just taken it for granted that the representatives

(Testimony of Herbert C. Freeman.)

we had designated were to be re-elected unless we informed them to the contrary.

Q. In your opinion, has North American Company been better informed, or advised, as to various matters pertaining to the applicant since Mr. Black has become president than it was during Mr. Hockenbeamer's presidency?

A. I don't think there has been really any difference. I think possibly we have been less fully advised because of the fact that before Mr. Black became president, he personally had this contact with California, and was informed more of details. There is only one thing that occurs to [1618] me, and I don't know whether this is a fair statement either, when the dividend was reduced during Mr. Hockenbeamer's lifetime, we were not even informed that such a thing was in contemplation. Now, I do think that in view of the fact that Mr. Fogarty and I are directors, Mr. Black would try to inform us of a thing of that kind before it happened. To that extent, I—but I don't know that Mr. Hockenbeamer was in a position to inform us. I think perhaps he was not, and I don't want to appear to question his not letting us know. With that general observation, I don't think there is really very much difference.

Q. Did Mr. Black inform you that he was going to recommend the increase of applicant's dividend in 1933 on its common stock before that increase was passed on by the Board?

(Testimony of Herbert C. Freeman.)

A. I rather think he did. I don't recall specifically. I did not personally have any discussion with him on it, but I rather think he would have advised us.

Q. Does Mr. Black furnish your company with substantially the same information that was furnished by Mr. Earl during his lifetime?

A. Well, as to reports, documents, and specific information, I would say we get substantially the same. What Mr. Earl added was more in the way of personal comment and of greater detail. He sent more detailed statements as [1619] to what happened at the meetings that he attended, the discussions, and so on, whereas what we get now are the Minutes.

Q. Well, did you have an understanding with Mr. Black before he left New York to become president of the Pacific Gas & Electric Company, as to what material would be sent to you after he began acting as president?

A. No, there was no discussion as to any change in the nature of the information. We expected to receive just the same reports and matters of that kind as we always had done.

Q. During Mr. Earl's lifetime he sent to you directly the copies of the Minutes of the meetings of the Board, and the Executive Committee, that were furnished to him when he was present at the meetings; did he not?

A. Yes, I think that was probably true. You

(Testimony of Herbert C. Freeman.)

mean, that instead of getting those through Mr. Earl——

Q. Through a director who was present at the meeting.

A. We would get them direct. But I think that arrangement was made after Mr. Earl's death and before Mr. Black went to California.

Mr. Phleger: I think the record shows that in July of 1935, after Mr. Earl's death, before Mr. Hockenbeamer's death, that Mr. Hockenbeamer gave an order to Mr. [1620] Foote to send on the same material that Mr. Earl had been sending on. That is Commission's Exhibit No. 5. So I figure that Mr. Black had nothing to do with it.

The Examiner: This would be in accordance, then, with Mr. Freeman's recollection.

Mr. Phleger: I just wanted to call that to counsel's attention in case she did not have it in mind. I noticed it the other day.

(Discussion off the record.)

By Miss Calkin:

Q. Does Mr. Black frequently consult you about major problems which he intends to submit to the Board before they are actually submitted?

A. No.

Q. Do you go over the Minutes of the meetings of the applicant's Board and Executive Committee when they are received by you or Mr. Fogarty?

A. Yes.

(Testimony of Herbert C. Freeman.)

Q. After reviewing the same, what action, if any, do you take thereon?

A. I don't recall ever having had occasion to take any action. I have read them for information and then they have been filed.

Q. Are you supplied with what might be called the agenda of the Directors or Executive Committee meetings [1621] prior to the time the meetings are held?

A. No, I don't think we are. I am pretty sure we are not.

Q. From the reading of these Minutes, have you ever been apprised of some action taken by the Board with which you did not agree?

A. No, I cannot say that I ever have.

Q. So that you do not recall ever having voiced to Mr. Black any objection to any action taken by the applicant's Board? A. No.

Q. Why is the North American Company not now represented on applicant's Executive Committee?

A. It is impracticable. The only way in which that could serve any useful purpose would be if we had somebody in California who represented us and who could attend those meetings, but to have anybody in our New York organization on that committee would just be a nuisance because it would make it harder for them to get quorums.

Q. Does the fact that Mr. Black is now president of the applicant have anything to do with the

(Testimony of Herbert C. Freeman.)

decision of the North American Company not to have representation on this committee?

A. No, it has no relation to that at all. [1622]

Q. If Mr. Black were no longer president of the applicant, would North American insist upon its representation on this Committee?

A. I can't imagine that we would do so. Of course, that is assuming something which—that leads to the question as to who would the president if Mr. Black were not the president. If we thought there were a president there who was definitely hostile to North American's interests, although I don't know how he could affect them without affecting the interests of all the stockholders—but assuming that took place, that would create an entirely new situation. We would have to look at it.

Q. What, if anything, do you know about Mr. Black's selection as president of the applicant?

A. My information comes entirely from discussion with the other officers of the North American Company, and it goes back to the time when Mr. Miller called Mr. Fogarty and said that the Board out there would like Mr. Black to be made president of Pacific Gas. I don't think at that time he had consulted all of the members of his Board. I think he had consulted certain members of the Board, and was expressing their opinion.

Mr. Fogarty reported that to us and we discussed it. My recollection is that later Mr. Miller had canvassed more members of the Board, and re-

(Testimony of Herbert C. Freeman.)

peated his request, and, after [1623] discussion, we decided that we had no right to stand in Mr. Black's way; that it was quite a compliment to Mr. Black to call him back there to head that company.

We had every confidence that Mr. Black would handle the situation, and we consented.

Q. What conversations, if any, did you have with Mr. Black prior to his leaving for California to accept the presidency regarding his future attitude towards North American Company and its interests in the applicant?

A. I don't recall any specific discussion along those lines.

Q. Did you have any discussions with him concerning what his future contacts with the North American people on business of the applicant would be?

A. No, I am quite sure I didn't personally, and I don't think anybody else did.

Q. Do you know whether——

A. Nobody did, to my knowledge. We expected the relations between the companies that had always been agreeable would continue. We had no reason to think otherwise.

Q. You know nothing about any representations which were made by Mr. Black, if any, to the effect that he would confer with North American people regarding any major problems which would come up for his determination as president of the appli-

(Testimony of Herbert C. Freeman.)

cant, and seek their advice and recommendations concerning [1624] the disposition of the same?

A. No, I am sure there was nothing of that kind.

Q. Mr. Black never told you in substance, then, that he would consult with you or Mr. Fogarty or the North American representatives about applicant's problems before submitting the same to the Board for determination? A. No.

Q. To what extent has Mr. Black conferred with you regarding the applicant's problems since he has been president of the applicant?

A. He hasn't had occasion to consult with me individually to any extent. He would naturally speak to Mr. Fogarty, as the senior officer. The only discussions I think I have ever had with Mr. Black have been when he was—on one occasion he called me, because I think Mr. Fogarty was away, or was unavailable, to tell me of financing that had been arranged, that they proposed to do.

I think he may on other occasions have told me about the progress that was being made in the Hetch-Hetchy matter. These conversations have been in the way of informing us of what was going on, and not of discussing them before arriving at a conclusion.

Q. How recently have you seen Mr. Black, or how many times have you seen him since he became president of the applicant? [1625]

(Testimony of Herbert C. Freeman.)

A. I think I have seen him twice. My recollection is that he has been in New York twice, and has called in to see us. He didn't come either time specifically to see us, but he was in New York, and came in, and we discussed things in a general way.

Q. Could you be more specific concerning the subject matter of the conversations that you had with Mr. Black on these occasions you have seen him since he has been with the applicant?

A. My recollection is that the first time he was in New York—the only specific matter that stands out in my mind is that he told us who the members of that Board were, and what their interest in the company was, what their association with it was, and how they stood in the community. The last time he was here—I don't recall any specific matter that stands out. It was—I think early in the summer of last year we probably discussed the Hetch-Hetchy situation, but I don't think there was anything about that that he could tell us that we didn't know from the records.

I think our conversation was just generally about the affairs of the company.

Q. To what extent have you discussed with him the present application and proceedings based on the application?

A. Well, not at all directly, only in the—I think we have exchanged telegrams as to Mr. Fogarty

(Testimony of Herbert C. Freeman.)

and I being [1626] available for the hearings, but that is the extent of our——

Q. Do you know by whom the application for exemption was prepared?

A. No, I don't know.

Q. Well, do you know whether it was prepared in the offices of the North American Company or by the applicant?

A. Positively not in the offices of the North American Company.

Q. I believe you testified that you have talked to Mr. Black only twice that you can recall over the telephone since he has been president.

A. That's all I can remember.

Q. How many times, if any, have you talked to other representatives of the applicant since 1935?

A. I think since then I have talked to Mr. Downing, when he has been in New York.

Q. No, over the telephone.

A. Over the telephone?

Q. Yes.

A. I don't recall having talked to anybody on the telephone.

Q. Now, I believe you said that—you testified on direct examination that you had talked with Mr. Downing, Mr. Wishon, and Mr. Coghlan at various times since 1935 on the occasions when they had been in New York. [1627]

A. Yes.

Q. Could you state generally the substance of

(Testimony of Herbert C. Freeman.)

the conversation that you had with these gentlemen?

A. They were—in the case of all of these gentlemen, their visits have been more of what you might call a business-social visit. In other words, it was for the purpose of becoming better acquainted, renewing acquaintance, talking quite generally about the business that we were both interested in, but not for the purpose of discussing any particular subject.

Q. What other members of applicant's organization are you acquainted with, other than those that you have previously testified about?

A. The only other man I have met is a man whose name I can't remember. He was one of the officers of the subsidiary companies at the time they belonged to us, and I think most of my correspondence with them about the Federal Trade Commission questionnaires were with him; and he was in the East——

Q. Is that Mr. Hodges?

A. No, he was in the East, oh, a year or eighteen months ago, and he dropped in to see me.

Q. What are his duties with the applicant at the present time?

A. I am afraid I can't tell you. He just came in be- [1628] cause we had had this correspondence, and he thought that it would be nice to meet personally. And that was all. He had no particular business to discuss.

(Testimony of Herbert C. Freeman.)

Q. With whom——

A. And I have tried to remember his name, but I can't remember it.

Q. With whom in applicant's organization have you corresponded since 1935?

A. Mr. Black, Mr. Foote, Mr. Beckett. I believe those are the only ones.

Q. And you have testified on direct examination, I believe, that the nature of that correspondence was to seek—get additional information, and answer questions which arose upon your examination of the material which had been furnished you by the applicant?

A. That would be in connection with my—any letters I may have had to Mr. Black. I think with Mr. Beckett and Mr. Foote it has been more in the nature of acknowledging data that they have sent us, and then the formal information that they need for reports that they are filing. I don't believe I have had occasion to——

Q. Do you recall my having been in the offices of the North American Company in the Fall of 1939, Mr. Freeman? A. Yes.

Q. At that time I requested permission to examine all [1629] of the correspondence files of the North American Company which contained correspondence with the applicant. You recall my having made such a request? A. Yes.

Q. So far as you know, were all of the files of such nature given to me for examination?

(Testimony of Herbert C. Freeman.)

A. As far as I know, they were.

Q. Have you since that time examined the documents which I took copies of at the time I made that investigation?

A. I think I have. It was immediately after your visit.

Q. Would you say that the documents which I took copies of were typical of the correspondence which had been exchanged between you and the various officers of the applicant since 1930, and up to the present time?

A. I would say that except for simple acknowlments and forwarding of formal information, that they comprised practically all my correspondence.

Q. What was the extent of your contacts with Mr. Hockenbeamer during his lifetime?

A. My personal contacts consisted simply in meeting him on one or two occasions when he was in New York. I don't believe I ever had occasion to correspond with him or have any direct dealings with him.

Q. Will you enumerate all the instances, if any [1630] there were, in which you personally have made recommendations to the applicant in respect to any matter?

A. The only recommendation I can remember making was the very minor one with regard to the form of their annual report. I don't recall any other annual recommendation that I have made.

(Testimony of Herbert C. Freeman.)

Q. Well, in your discussions with Mr. Black, or with other representatives of the applicant, have you made suggestions as to improvements in the applicant's operating methods or financial policies, or any other matters pertaining to the applicant's business?

A. No, I can't say that I have.

Q. I believe you testified that applicant's Exhibit No. 33 contains, actually or by reference, copies of all the reports which are sent regularly by the applicant to the North American Company. Now, what reports are furnished you by the applicant irregularly, that is, which are not included in that exhibit by reference or otherwise?

A. The only one I recall is the annual report that is shown as the confidential report to insurance companies. We did receive that, I think, just as a matter of regular routine, up to a few years ago; and then, for some reason, it was discontinued, and when I found that we were not getting it, I asked if they would send us a copy of that. [1631]

Mr. Phleger: I believe that that is indicated in Exhibit No. 33.

By Miss Calkin:

Q. Well, to what extent——

Mr. Phleger: Exhibit 33 includes, among the reports regularly furnished, as Item No. 13, "Report for insurance companies prepared annually and mailed to larger insurance companies and many

(Testimony of Herbert C. Freeman.)

other institutions or investors." That is the report you refer to, is it not?

The Witness: That is in the index to the file, is it not?

Mr. Phleger: Yes.

The Witness: I don't think there is any reference to it in the body of the file.

The Examiner: Is that the report to which you refer?

The Witness: That is the report, yes, sir.

Mr. Phleger: Yes, I think you are right, it is stated in the index, but there is not a blank sheet for it.

The Witness: I did not notice it when I went through it.

By Miss Calkin:

Q. Now, in addition to what might be called reports, what additional information does the applicant furnish the North American Company? [1632]

A. I don't think there is any additional information beyond what is conveyed in the minutes of the meetings and such correspondence as we have had.

Q. Well, to what extent does Mr. Black advise you by correspondence of matters pertaining to the applicant's business?

A. I would say to a very small extent. He sends us, or, rather, I should say, he has sent us, during these past years, copies of the briefs that have been

(Testimony of Herbert C. Freeman.)

filed in their Gas Rate Case, matters of that kind. They have been sent either by Mr. Black or by his instructions, merely for our information and our files.

Q. Have you ever requested applicant to furnish you any information which it has refused to give? A. No.

Q. Do you frequently suggest a different course of action than that reflected in the reports which are sent you? A. No.

(Discussion off the record.)

By Miss Calkin:

Q. You stated, I believe, that the only time that you can recall ever having advised applicant on any particular thing was in connection with the annual stockholders' reports? [1633] A. Yes.

Q. So that there has never been any instance in which applicant's representatives have refused to follow recommendations or suggestions made by you? A. No.

Q. Because, according to your testimony, you have not made any?

A. That was the only reason.

Q. Would you say that in your opinion Mr. Black is more amenable to suggestions casually made by you than Mr. Hockenbeamer was?

A. I would say Mr. Black is well able to take care of himself under any conditions. In other words, we have not had occasion to make any casual

(Testimony of Herbert C. Freeman.)

recommendations, and I certainly would not pick Mr. Black as a man on whom I could creep up with any suggestions without his recognizing it.

Q. Has there ever been any difference of opinion between you and Mr. Black on any matter pertaining to applicant's business?

A. No, I cannot say that there has been.

Q. Have you and Mr. Fogarty ever discussed what course you would take if applicant's representatives indicated that they would not abide by any suggestions made by either of you in the event that you made any?

A. Well, we have never considered that eventuality. [1634] We have had more real troubles than would enable us to spend any time with the imaginary ones.

Q. What consideration do you think should be given suggestions which North American might make as applicant's largest stockholders?

A. I didn't quite catch the drift of that.

(Question read.)

A. I doubt if we have any status as large stockholders. After all, we have two directors on the Board, and any suggestions that we might want to make should normally be made by those directors. I think that is the way we would proceed if we had any suggestions.

Q. Would you make those suggestions in the first instance to Mr. Black and ask that he present your

(Testimony of Herbert C. Freeman.)

views to the Board; or would you attend a directors' meeting and present them directly?

A. Of course, these are hypothetical questions, but, as a director of any company, I would feel that if I had any matter to bring up at a Board meeting, that I was under obligation to discuss it with the executive officers before I brought it up. I do not think it is fair for any director to go into a meeting unless there is serious disagreement, to go into a meeting and present a matter to the Board of any importance unless the executive officers know that it is going to be presented. [1635]

Q. Do you go over applicant's budget either prior to the time it is submitted to applicant's Board, or subsequent thereto?

A. No, we have never gone over the budget.

(Witness temporarily excused.)

Whereupon:

EDWARD L. SHEA

called as a witness by and on behalf of the Commission, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Where do you live, Mr. Shea?

A Locust Valley, New York.

(Testimony of Edward L. Shea.)

Q. What position do you hold with North American Company? A. President.

Q. How long have you been connected with it?

A. Since November, 1939.

Q. Prior to that date, did you have any connection with it?

A. For a few months prior to that time I was a director and a member of the Executive Committee.

Q. What was your occupation or profession prior to joining North American?

A. I was connected with the oil business. [1636]

Q. Do you know Mr. D. H. Foote?

A. No, sir.

Q. Do you know Mr. C. O. G. Miller?

A. I don't believe I do.

Q. Do you know Mr. John D. McKee?

A. I don't believe I do.

Q. Do you know Mr. Norman B. Livermore?

A. No.

Q. Do you know Mr. Allen L. Chickering?

A. No.

Q. Do you know Mr. Paul M. Downing?

A. I may have met him, I am not sure.

Q. Do you know Mr. John B. Coghlan?

A. No.

Q. Do you know Mr. Charles K. McIntosh?

A. No.

Q. Do you know Mr. A. E. Wishon?

A. No.

(Testimony of Edward L. Shea.)

Q. Do you know Mr. Silas H. Palmer?

A. No.

Q. Do you know William W. Crocker?

A. I think I do.

Q. Do you know Mr. Henry D. Nichols?

A. No.

Q. Have you ever, directly or indirectly, on any [1637] occasion, discussed the affairs of the Pacific Gas and Electric Company with any of the gentlemen whose names I have just read? A. No.

Q. Have you ever been at the office of the Pacific Gas and Electric Company in San Francisco?

A. No.

Q. Do you know Mr. James B. Black?

A. Yes.

Q. How long have you known him?

A. Less than a year.

Q. What were the circumstances of your meeting?

A. During visits to New York, Mr. Black came in to pay his respects, and we chatted for probably 15 or 20 minutes in my office.

Q. Is that the only occasion on which you have ever met him?

A. I think I have seen him once since that time.

Q. Where? A. In New York.

Q. Do you know what the occasion was?

A. I think it was just a courtesy call. I asked him whenever he was in town to come in and I would be glad to have him take lunch with me.

(Testimony of Edward L. Shea.)

Q. Would you say that you have seriously, on any [1638] occasion, discussed business affairs with Mr. Black? A. Not seriously, no.

Q. What correspondence, if any, have you had with Pacific Gas and Electric Company or any of its officers?

A. One letter addressed to Mr. Black within the last week or two, I think it was last week, in connection with a request for information connected with our integration problems.

Q. Have you talked with Mr. Black or any other officer of the Pacific Gas and Electric Company over the telephone?

A. I have talked with Mr. Black.

Q. How frequently?

A. I think not more than twice, I believe not more, than twice.

Q. Do you recall the subject matter of those conversations?

A. I believe the first talk was about the effect the new income tax law might have on the profits of the P. G. & E., and the second conversation was a few days ago when I told him that we were sending him a letter asking for certain information in connection with integration. I also told him that I understood I was going to be called in the hearing here and told him I did not see how there could be any background for the proceedings, as Judge Healy had made some kind of a comment, and so forth. [1639]

(Testimony of Edward L. Shea.)

Q. Mr. Shea, have you ever, on any occasion, suggested to the Pacific Gas and Electric Company, or any officer, that it do or refrain from doing any act? A. No, sir.

Q. Does the North American Company control the Pacific Gas and Electric Company directly or indirectly? A. No.

Q. Are the management or the policies of the Pacific Gas and Electric Company subject to a controlling influence, either directly or indirectly by the North American Company? A. No, sir.

Mr. Phleger: That is all.

The Examiner: Some questions, Miss Calkin?

Miss Calkin: I have a couple.

Cross-Examination

By Miss Calkin:

Q. Mr. Shea, is it true that for many years you were in business in the State of California?

A. No.

Q. Did you spend a great deal of time in California?

A. I used to visit California once or twice a year.

Q. But you have never been engaged in business in that state?

A. I have never had California as a residence.

[1640]

Q. Well, being in the oil business, I assume when you were in California, you were in that

(Testimony of Edward L. Shea.)

portion of the state in which oil fields and properties are located?

A. No, I spent most of my time in San Francisco.

Q. In San Francisco? A. Yes.

Q. But you never became acquainted with any of the men who are now directors of the applicant, except Mr.——

A. Now directors of——

Q. Mr. Crocker and Mr. Downing?

Mr. Phleger: "Applicant" means P. G. & E.

A. Oh, I met Mr. Crocker, I believe, socially, and I am not sure that I met Mr. Downing, but it is possible that I may have.

Q. Did you meet those gentlemen—did you meet Mr. Crocker and, if you met Mr. Downing at all, did you meet them prior to the time you became president of the North American Company?

A. Yes.

Q. And you had no occasion to discuss with them the business of the applicant? A. No.

Q. Do you own any of the securities of Pacific Gas and Electric Company?

A. Do I personally? [1641]

Q. Yes. A. No.

Q. You testified that you never had any serious discussions with Mr. Black on the occasion that he was in your office concerning the applicant's business. You did, however, discuss generally the affairs of the applicant, did you not, Mr. Shea?

(Testimony of Edward L. Shea.)

A. General business conditions on the Coast.

Q. And you have never made any recommendations or suggestions to Mr. Black or any representative of the applicant concerning the business of the applicant? A. No.

Q. When you became president of the North American Company, or at any time prior or subsequent thereto, did you have any conversations with Mr. Williams regarding the relationship between the applicant and the North American Company? A. None that I ever remember.

Q. You don't recall ever having discussed——

A. No.

Q. Have you ever discussed with Mr. Williams the investment of the North American Company in the Pacific Gas and Electric Company?

A. I am not sure what you mean. Can you give me a lead as to what you are—— [1642]

Q. Well, have you ever, in your conversations which I assume you have had with Mr. Williams since you became president of the North American Company, or prior thereto, discussed in any manner the investment of the North American Company in the common stock of the Pacific Gas and Electric Company?

A. We have discussed the investments of Pacific Gas and Electric and Detroit Edison at meetings at which Mr. Williams was present, but only in connection with our integration.

Q. Well, upon becoming president of the North

(Testimony of Edward L. Shea.)

American Company, did you form an opinion as to what the relationship between the applicant and the North American Company was?

A. Yes, I suppose I formed an impression, yes.

Q. And what is that opinion or impression?

A. That the relationship is one of an investor in the company.

Q. You testified that in your opinion, at least, the North American Company does ont exercise a controlling influence over the management or policies of the applicant. Why do you say that that is true?

A. Because I have seen no evidence of any effort to control it or influence it.

Q. Well, now, on your direct examination and on your [1643] cross-examination, have you testified concerning all your contacts which you have had with any representatives of the Pacific Gas and Electric Company?

A. To the best of my recollection, I have.

Q. Have you ever given any instruction to any one in North American Company respecting action which those persons should take in regard to the Pacific Gas and Electric Company? A. No.

Q. Have you discussed with Mr. Freeman and Mr. Fogarty the information received by them in the reports which are regularly sent by the applicant to the North American Company?

A. No.

Q. Do you personally go over those reports?

(Testimony of Edward L. Shea.)

A. I go over the income statements, and occasionally I review the Executive Committee report.

Q. But you do not discuss those with Mr. Fogarty or Mr. Freeman?

A. I have not heretofore, no.

Q. Who in the North American Company's organization would you say was in closest touch with the affairs of the applicant?

A. Mr. Freeman and Mr. Fogarty.

Q. Are you acquainted with the fact that in 1930 there [1644] was an oral understanding between Mr. Hockenbeamer and Mr. Black that the North American Company would be entitled to three representatives on applicant's Board of Directors and one member on its Executive Committee?

A. I hadn't been aware of it until the last few days.

Q. Do you know why the North American Company now has only two representatives on applicant's Board, and no representatives on its Executive Committee? A. No.

Q. That matter has never been up for discussion at the Board of Directors' meetings of the North American Company?

A. Never, to my knowledge, or—let me correct that—not in my presence, during the time that I have had any connection with the company.

Miss Calkin: I think that is all.

(Testimony of Edward L. Shea.)

The Examiner: Do you have any questions, Mr. Phleger?

Mr. Phleger: That is all.

The Examiner: You are excused, Mr. Shea. Thank you.

(Witness excused.)

The Examiner: We will recess until 2:30.

(Whereupon, at 12:20 o'clock p. m., a recess was taken until 2:30 o'clock p. m.) [1645]

Afternoon Session

(Hearing was resumed, pursuant to recess)

2:30 P. M.

HERBERT C. FREEMAN

resumed the stand, and testified further as follows:

Cross Examination

(Continued)

By Miss Calkin:

Q. What knowledge does come into your possession, Mr. Freeman, regarding the budget of the applicant?

A. We see the authorization. We do not actually see the budget of proposed expenditures, but we do

(Testimony of Herbert C. Freeman.)

see the total of authorizations against those proposed expenditures.

Q. Now, is that what is referred to as the G. M. Estimates?

A. No, the G. M. Estimates are a part of the proposed expenditures.

Q. Now, in what form do you see those?

A. If I may refer to that exhibit I can show you.

Q. I hand you Exhibit No. 33 (handing witness exhibit).

A. There is a statement of the total amount authorized for construction. I beg your pardon, they do call it Statement of G. M. Construction Work in Progress by Departments as of end of the month, and that shows the total amount authorized for construction. [1646]

Q. For the ensuing month?

A. No, for any time in the future, the amount actually authorized and against that the amount expended to the end of the month, and then a balance column showing the amount required to complete the work. That is all we see with respect to future commitments for construction.

Q. Now, is that a report prepared for the Executive Committee meetings?

A. It is a report that is presented—it is submitted monthly, I think, to the Board. That is presented to the Executive Committee monthly. Then there are statements showing details of the actual

(Testimony of Herbert C. Freeman.)

expenditures as between new construction and retirements reserve charged.

Q. Do any members of the North American organization assist the applicant in the preparation of its budget? A. No.

Q. Have they ever done so? A. No.

Q. Have you ever conferred with Mr. Black or Mr. Hockenbeamer regarding contemplated major construction projects of the applicant?

A. No.

Q. You have never made any suggestions regarding advisability of any such projects?

A. No. [1647]

Q. To what extent does Mr. Black give you authority concerning contemplated major construction work?

A. I don't know of any routine method by which he keeps us advised, and as far as I can recall there haven't been any such projects that he has taken up with us.

Q. You don't recall his discussing with you any contemplated construction work? A. No.

Q. Could you state what type of problems that you, as a representative of the North American Company, and as a director of the applicant, think that Mr. Black should present to you and seek your advice on before taking final action, or before final action is taken by the Board?

(Testimony of Herbert C. Freeman.)

The Examiner: (To reporter) Will you repeat that question?

(Reporter repeated the question.)

A. I should feel that there would be no real obligation on Mr. Black to take up any matters with us unless there was some difference of opinion in his Board. If he had any contemplated action on which his Board was undecided, was divided, and he wanted to see how we felt about it, there might be some point then in his discussing it with us. Apart from that, I should think that knowing the importance to us in making our future plans of the dividend policy of Pacific Gas & Electric, if he thought there was [1648] going to be any change in that, that he should take it up with us, bring it up and discuss it with us, so as to give us an opportunity to make our voice heard in connection with it.

In other words, it seems to me that anything that affects North American as a stockholder he ought to take up with us as the directors representing North American, but that anything that relates to the management of P. G. & E. as such—if he has got a united Board behind him, he doesn't have to consult with us. If he did consult with us, it would be because he thought we could possibly contribute something in the way of knowledge of the subject, or advice; and he might do that——

Q. Well, assuming that the construction of a

(Testimony of Herbert C. Freeman.)

hydro-electric plant was contemplated, which would require some new financing, which it was not thought would affect, or, at least, adversely affect the earnings of the company, in your opinion should Mr. Black consult with you about the construction of that plant before the matter was finally determined by the Board?

A. I don't think there would be any real necessity for him to do that. After all, the company is a utility, it must furnish service, and if, in order to do that, they have to expand their plant, it is something that is peculiarly within the control of the local management, and they [1649] will have a much better opinion of it than we could have at this distance.

The fact that it requires the financing wouldn't really change the position, because whether they have got the money or not, they have got to have the capacity, and he doesn't ordinarily consult with us. In fact, he has never consulted with us as to any financing that he proposed to do ahead of his discussion with his bankers and finding out what he can do in arranging terms.

So that I don't see why he should discuss with us a project which would lead to the necessity for financing.

Q. Well, have either you, or, to your knowledge, any other representative of the North American Company, ever indicated to Mr. Black the type of problem which you thought he should confer

(Testimony of Herbert C. Freeman.)

with you on prior to the time that definitive action was taken by the company?

A. No, I don't think we have, but I think that Mr. Black would naturally discuss with us anything that affected our interests as a stockholder in an important way.

Suppose, for example, he was thinking of doing some financing in the form of convertible securities. They would have to be offered to the stockholders, and I think in that case we should expect him to consult with us about it. But we have never tried to lay down any pattern of [1650] the kind of things. We have to leave that to his, you might say, judgment, and perhaps to his courtesy to us as representatives of the North American Company.

Q. Now, you recall the reduction of the dividends on applicant's common stock which occurred in 1933? A. Yes.

Q. Do you recall Mr. Miller, one of the directors of the applicant, having been in New York City at that time, and getting in touch with Mr. Fogarty or yourself regarding that reduction, and joining with you in a request that the matter be reconsidered by the applicant's Board?

A. I think that did happen. We certainly tried to get them to reconsider it.

Q. Well, do you recall——

A. And while I didn't meet Mr. Miller, or discuss it with him in any way, I do believe that he

(Testimony of Herbert C. Freeman.)

felt they had acted with perhaps an insufficient representation at the meeting.

Q. Do you know of any other instance in which the representatives of North American Company and Mr. Miller have acted in regard to any affairs pertaining to the applicant?

A. No, I don't recall any other. I think that just happened because he was in New York at the time.

Q. Were you advised prior to the increase in the [1651] dividends in applicant's stock, which occurred in 1936, as to the proposed increase?

A. I don't recall specifically whether we were, but I rather think that we did have some intimation.

(Whereupon, a short recess was taken.)

After Recess

Q. Have you ever discussed the dividend policy of the applicant with Mr. Hockenbeamer?

A. No.

Q. How about with Mr. Black?

A. No, I do not recall any discussion with him.

Q. But you do believe you were advised as to the contemplated increase in the dividends in 1936.

A. I think we were, yes.

Q. And you do expect to be advised of any contemplated change in the present dividend rate of the applicant on the common stock before action thereon is taken by the Board?

(Testimony of Herbert C. Freeman.)

A. I would expect to be, unless the change were made without any warning in a Board meeting. That, of course, is something that nobody can control. If the directors in a meeting decide to take some action, then it is our fault for not being present at the meeting.

Q. In other words, you would expect Mr. Black to advise you of any recommendations which he expected to make [1652] which would change the dividend policy?

A. Yes, I think he would, so that we might, if we wanted to, be present and express our opinion.

Q. Has Mr. Black ever assured you that he would give such advance information as to his recommendations?

A. Not to my knowledge, he has not so expressed himself to me.

Q. Is it customary for Mr. Black to advise you prior to the declaration of all the dividends on the common stock as to what his recommendations will be to the Board?

A. He never has done so, because there has been only one change since he became president.

Q. And to the best of your knowledge, he did advise you as to that change?

A. I think he did, yes.

Q. But if Mr. Black intends to recommend the payment of what might be now considered the regular dividend on the common stock, that is eight

(Testimony of Herbert C. Freeman.)

percent, he does not give you advance notice of such a recommendation? A. No.

Q. Mr. Freeman, in connection with your work with the North American Company, do you have supervision over the preparation of registration statements in connection with the issuance of securities by the subsidiaries of the North American Company? [1653]

A. Not exactly supervision. Nearly all the registration statements come to me as soon as they are set up in proof form, and I go over them and make my comments. Other officers do the same. Perhaps, in some ways, I have in the past been one of the last people to be consulted on any changes, so that to that extent, I may be said to have had more or less supervision.

Q. Well, in connection with the registration statements filed by the applicant with the S. E. C. in connection with the issuance of securities by it, have you received from the applicant proofs of the registration statements of those issues?

A. I really don't remember whether we have. It is some time since they did any financing, and I cannot remember now whether I saw a proof or whether I just saw a final form as filed. I can say this, though, that we have really had nothing to do with the form or the composition of those registration statements. They have been handled entirely by the company, and what has been sent to us has been for our information, so that we might

(Testimony of Herbert C. Freeman.)

know what we were becoming liable for, as directors.

Q. You don't recall——

A. I don't recall any case in which any features of the registration statement has been discussed with us.

Q. And you don't recall ever having suggested any [1654] changes in the proofs of any registration statements, if you received such proofs?

A. I don't recall that.

Q. And no members of the staff of the North American Company assisted in the preparation of those registration statements? A. No.

Q. Do you participate in negotiations with the underwriters in connection with the financing of the subsidiaries of the North American Company?

A. Yes, quite frequently.

Q. That is part of your duties?

A. Yes, that is Mr. Fogarty's primary duty, but I personally participate in those discussions.

Q. And you, I believe, are Vice President of the Committee on——

A. No, I am a member of the Executive and Finance Committee.

Q. Executive and Finance Committee?

A. Yes. But, as I say, we work pretty much as a team, and if Mr. Fogarty wanted me to sit in on the negotiation, I would do so.

Q. Is this Executive and Finance Committee of the North American Company, Mr. Freeman, com-

(Testimony of Herbert C. Freeman.)

parable to the Executive Committee of most Corporations, or is it a sub or [1655] separate committee which functions in the organization? Which is more important in the title, Executive Committee or Finance Committee? I mean, do you have an Executive Committee distinct and separate from the Executive and Finance Committee?

A. No, the Executive and Finance Committee is substantially the Executive Committee. It is just a difference in name. It functions between meetings of the Board.

Q. And performs the duties usually performed by an Executive Committee in a corporate setup?

A. Yes, but there was a deliberate purpose in calling it Executive and Finance Committee. It was to indicate that it dealt with the financial problems of the company to a greater extent, perhaps, than most Executive Committees do.

Q. Would it be correct to say that in the North American organization that Mr. Fogarty or yourself were most active in carrying on negotiations with respect to the financing of the North American Company and its subsidiaries?

A. I think that would be a fair statement. Mr. Piske, of course, also participated in those discussions.

Q. He is the Treasurer—— A. At times.

Q. He is the Treasurer of the North American Company? [1656]

A. He is now the Treasurer, yes; and usually

(Testimony of Herbert C. Freeman.)

one of the chief executives of the subsidiary companies sit in with us, or perhaps in some cases, it would be more correct to say that we sit in with them. Frequently, of course, negotiations have to be carried on over a period of days or weeks, and in that case we will handle the direct contact with the bankers in New York, and consult with the executives of the subsidiaries over the telephone.

Q. But there is no one in the North American organization that is more active than yourself and Mr. Fogarty in that type of work? A. No.

Q. Who formulates the refinancing plans of the applicant, if you know?

A. The executives of the company—Mr. Black and his fellow officers.

Q. And did Mr. Black or Mr. Hockenbeamer ever confer with you regarding the formulating of such plans?

A. No, I would say not. They have advised us from time to time that they were planning so and so much financing, and indicated the form of it.

Q. Have you ever submitted to Mr. Black or any of the officers of the applicant a plan of re-financing, or initiated a re-financing carried out by the applicant? A. No. [1657]

Q. Have the representatives of any underwriting firm ever approached you in an effort to get the leadership of syndicates forming in connection with the financing of the applicant, or participate in such syndicates?

(Testimony of Herbert C. Freeman.)

A. I don't think seriously. No, I think there have been—I am not speaking of myself personally now, because nobody has approached me on that point; but whenever there was any word of financing being done, there were always people who would get in touch with everybody they possibly can, to try to secure some position in the financing. And I have no doubt that there have been firms that have approached one or another of us on that basis. Whether—I doubt whether that would be from the point of view of heading the syndicate, because, after all, that rests peculiarly with the management of the company itself.

Q. Do you know what response representatives of the North American Company have made as to any such inquiries or efforts on the part of representatives of various banking houses?

A. Any that I know about we have simply referred to the company.

Q. Are you acquainted with Mr. Stanley Russell? A. No.

Q. Do you know who he is? [1658]

A. Yes, I know who he is, but I have never met him.

Q. Do you know any representatives of Blyth & Company?

A. I have met Mr. Charles Blyth, and I have met Mr. George Leib. I don't know them intimately at all, but I have met them.

(Testimony of Herbert C. Freeman.)

Q. Do you know Mr. Mitchell, Mr. Charles Mitchell?

A. Oh, yes, I know Mr. Mitchell.

Q. Are those gentlemen that you have mentioned here Messrs. Blyth, Lieb, and Mitchell—close personal friends of yours, Mr. Freeman?

A. No.

Q. To what extent have you discussed applicant's financing with any of the representatives of Blyth & Company? A. Not at all.

Q. Mr. Freeman, I hand you Commission's Exhibit No. 42 which lists all of the issues of the applicant, and beginning with the period 1930, will you please relate everything that you now can recall that you had to do in connection with any of the issues of the applicant since that date?

A. I have not had anything to do with any of the issues.

Q. Well, have you carried on any conversations with Mr. Black or any representatives of the applicant relating [1659] to any of those issues?

A. Mr. Black, on one occasion—I think it was during Mr. Fogarty's absence—called me and told me of the arrangements he had made for the handling of one of the issues. I think it was this large issue in March, 1936. But it was from the point of view of advising me, rather than of discussing with me, as to whether he should or should not do any particular thing.

(Testimony of Herbert C. Freeman.)

Q. Did you ever discuss with Mr. Hockenbeamer as to who should have the leadership of applicant's financing after the National City Company went out of business, out of the investment banking business? A. No.

Q. In 1933? A. No.

Q. Did Mr. Hockenbeamer ever seek your advice as to the responsibility or capabilities of any of the investment banking firms in the early part of 1935 or the latter part of 1934?

A. Not to my knowledge. He didn't talk to me about it.

Q. And you never made any suggestions to him as to who should be considered as the syndicate manager of the 1935 issue, first 1935 issue?

A. No.

Q. Did you ever have any discussions in the latter [1660] part of 1934 or the early part of 1935 with Mr. Black or Mr. Fogarty regarding what underwriting firm might be desirable to head the applicant's business?

A. Not just from that point of view. We realized that in 1935 there was a new problem presented, because of the change that had taken place in the relationship of banks to underwriting groups, but any discussion we had was just purely by way of conjecture among ourselves as to which group would naturally head up the syndicate.

Q. Well, do you know whether or not any representative of the North American Company com-

(Testimony of Herbert C. Freeman.)

municated to Mr. Hockenbeamer the views of North American Company as to who might be a satisfactory firm to head the first piece of applicant's business in 1935?

A. No, I don't know that anybody did.

Q. Do you know who selected the firm of Lazard Freres & Company to head the first piece of business in 1935?

A. I have always understood it was Mr. Hockenbeamer.

Q. Did the North American representatives have any objections to Lazard Freres & Company heading up that business?

A. No, we had no objections. We weren't consulted about it.

Q. After you knew that Mr. Hockenbeamer, or some representatives of the applicant, had selected Lazard Freres [1661] to head this piece of business, did you, or to your knowledge any representative of the North American Company, express to Mr. Hockenbeamer a dissatisfaction over that selection?

A. No, not to my knowledge.

Q. Was there any understanding between North American representatives and Mr. Black at the time he became president of the applicant, as to who should head the next piece of applicant's financing?

A. No, there was no discussion.

Q. You will see from that exhibit, Mr. Freeman, that the first piece of financing by the applicant after Mr. Black became president was headed by

(Testimony of Herbert C. Freeman.)

Blyth & Company. Will you tell me all you know about Blyth & Company's selection as the head of that underwriting syndicate?

A. I think that selection was due to Mr. Black's feeling that they were the firm that should naturally head the syndicate for Pacific Gas & Electric financing.

Q. What do you mean by that—that that firm should naturally head the applicant's business?

A. I think because they were identified with former business of the company; they were looked upon as a California house; they were a good, strong house, with representation here in the East; they were in every way qualified to handle that financing. [1662]

Q. Before that selection was made by Mr. Black, did he confer with you, or any representatives of North American Company, to your knowledge, and seek your views as to whether or not Blyth & Company should be considered for this work?

A. Not to my knowledge. I might say that we knew from the time the first issue was made in 1935 that Mr. Black's preference would have been for Blyth & Company.

Q. So that you knew when he became president of the applicant that he would be more favorable to Blyth & Company having the leadership of the company than he was with respect to Lazard Freres & Company?

(Testimony of Herbert C. Freeman.)

A. Yes, I think it is fair to say that we knew that.

Q. You were in accord with his views on that matter?

A. Yes, in a general way, I think we were.

Q. And Mr. Black was acquainted with your preference in regard to the matter, that is the preference of North American Company?

A. Yes, I think he was. I think it is fair to say, though, that the other directors of P. G. & E. felt the same way as we did about it.

Q. Had you ever discussed the matter with any of the other directors?

A. No, we had never discussed it, but we had been informed that that was the case. [1663]

Q. Do you know anything about the activities of Blyth & Company during 1935 and the early part of 1936 to get the leadership of applicant's financing?

A. No, I have no knowledge of that.

Q. Have you ever discussed with Mr. Harrison Williams the question of syndicate manager for issues put out by the applicant in the past, or which might be issued in the future? A. No.

Q. Do you know anything about how Dillon, Read & Company, Kuhn, Loeb & Company, and Morgan, Stanley & Company got substantial participations in the large 1936 issue?

A. That was one of the things I remember Mr. Black spoke to me about at the time of the tele-

(Testimony of Herbert C. Freeman.)

phone conversation that I mentioned, and it was that this was a very large issue, a $90,000,000 issue, and it was Blyth & Company's idea, as I understand it, that there should be no possible risk of the issue not being a complete success, and in order to do that, they thought that it was extremely desirable to have the three powerful firms connected with the issue.

Q. So far as you know, then, the representatives of the North American Company did not suggest the participation of these firms initially?

A. No.

Q. Has Mr. Black ever conferred with you regarding [1664] the price at which applicant sell the securities which it had issued since he became president?

A. I wouldn't say he ever discussed it with me. He has talked to me as to the price which they were discussing with the bankers.

Q. And you gave them at that time the benefit of your best judgment as to the adequacy of that price, or the fairness of it?

A. Yes, I think, as a matter of fact, that on behalf of one. I only remember one conversation with Mr. Black that related to financing. I think that was this March 1936 issue.

Q. Have you had any correspondence with Mr. Black regarding the financings of the applicant?

A. No, I don't believe I ever have. I am sure I have not.

(Testimony of Herbert C. Freeman.)

Q. During the period that Mr. Black was associated with the North American Company, did his duties require, or bring him in touch with, financings of the various subsidiaries of the applicant, or were his duties largely related to operating as distinguished from financial matters?

A. Oh, he would have been in close contact with any financing done by the company.

Q. Was he considered a financial or operating man when he came to the North American Company in 1927? [1665]

A. He was primarily an operating man, but, after all, he had been with us in New York for several——

Q. I said in 1927, when he came to you?

A. Oh, in 1927, I would say that he was regarded primarily an operating man.

Q. Well, in your opinion, did his years with the North American Company serve to increase his knowledge concerning financing of utility companies? A. I would say unquestionably.

Q. So you think he knew more about financial matters from the standpoint of a utility company when he left North American than when he came there? A. I would say undoubtedly.

Q. Mr. Freeman, could you describe generally the difference between the contacts which the North American had with its subsidiaries and those which it has with the applicant?

(Testimony of Herbert C. Freeman.)

A. There is very vast difference. I mean, it is a difference in kind, not merely of degrees. We try to keep advised on all of the major matters affecting our subsidiaries, not merely as to things that have happened, but as to things which are being planned before they happen. We do try to keep in touch with their organizations to a sufficient extent to be informed on more or less operating details, and certainly with respect to any major project [1666] of construction. We try to help them to look ahead to their requirements. We expect to be consulted as to any changes in the higher executives of the companies, to some extent, and salaries, matters of that kind, proposed rate changes, proposed franchise situations, and even as to their finances. While we know what is being done in the way of financing by Pacific Gas & Electric Company, we take no part in it, but in the case of our subsidiaries, we very frequently initiate the ideas that eventually lead to financing. We prepare financial plans and advise them as to what we think is the best form of financing, the best time to do it. We frequently discuss those matters with bankers before any plans are set up by the subsidiaries themselves, then we turn over the plans to them if we originate them, or if they originate them, they come and discuss them with us, and then work is set in motion to set up the issue, discussions with bankers for final say. So that even as to the limited degree of control that we exercise over our sub-

(Testimony of Herbert C. Freeman.)

sidiaries and detailed operations, it is vastly greater than anything we have ever had in mind with regard to the Pacific Gas & Electric, where we literally are stockholders with director representation, and where, due to the element of time and distance, even we, as directors, cannot possibly keep in touch with the detailed matters of operation.

Q. Has there never been a time when the North American [1667] Company, through any of its departments, performed any services either with or without a charge for the applicant?

A. There has never been any time when we performed any services for them.

Q. Mr. Freeman, is the testimony which you have given both on your direct and cross examination, or, in that testimony, have you described as accurately as it was possible for you to do so, the contacts which have existed between North American Company and the applicant which are within your knowledge since 1930?

A. Yes, I have.

Q. Do you know of anything which you have not covered in such testimony which would further show the relationship between these two companies since the North American has acquired a substantial interest in the applicant's securities?

A. I think it has all been very fully covered.

Q. On direct examination I believe you testified that in your opinion the North American Company does not now, or has not in the past, either con-

(Testimony of Herbert C. Freeman.)

trolled or exercised a controlling influence over the policies and management of the Pacific Gas & Electric Company. On what facts, or what is the basis of such an opinion on your part?

A. It seems to me that the facts speak for themselves. There has been nobody in the North American organization [1668] who has attempted in any way to direct or control any activity of the Pacific Gas & Electric Company.

Q. Well, why does the North American Company deem it advisable, if such it does, to not exercise the same supervision over the affairs of the applicant as is exercised over the affairs of its subsidiaries?

A. In the first place, the Pacific Gas & Electric Company has always been regarded as peculiarly a California company, and our desire has been to see them have as strong and representative a local Board as they possibly could have. It would not be practicable to induce representative men to serve on a Board of that kind if they thought their actions were going to be subject in any way to the direction or veto of a company three thousand miles away. It would affect their public relations. It is a situation in which our interest in the company is best served by that company being regarded as a California company, under California management.

Q. Then, would you say that your failure to exercise control of the applicant, or controlling influence over its management and policies, was due

(Testimony of Herbert C. Freeman.)

entirely to a feeling on the part of the North American Company that such a control or controlling influence was not desirable, or not to the best interests of it?

A. I would say that it was not desirable from the [1669] viewpoint that it would not be to our best interests as stockholders. [1670]

Q. But if the time should come when you felt that it would be to the best interests of the North American Company, as a common stockholder of the applicant, to exercise such control or controlling influence over the applicant, then it would be expected that North American would exercise such influence?

A. Of course, that is quite a hypothetical question, but my feeling about that is that if that situation ever arose, it would be better for us to sell our interest than to try to exercise control. I think we would do more harm by stepping in and saying, "Now, this company isn't being properly managed. We are going to manage it"—I think the repercussions from that in the State of California would hurt our investment far more than if we allowed it to be known that we were going to sell.

Q. But you do feel that if you thought it desirable to exercise controlling interest, you would be in a position to do so?

A. I don't think we would, except as against—possibly as against some other foreign interest that might have got in there and obtained control. In

(Testimony of Herbert C. Freeman.)

other words, with this present Board of Directors, or any comparable Board, composed of local people, I just don't believe we could step in there and take control.

Q. Well, now, I think you testified that at the time [1671] the North American Company acquired its interest in the applicant, it gave some form of assurance that they would not interfere with the management policies of the applicant. At least, that was what your understanding was, although you had no direct conversations to that effect with Mr. Hockenbeamer. Do you feel that that assurance places the North American Company under any kind of a moral obligation not to interfere, or what do you feel are the limits of that assurance?

A. I would say that an assurance of that kind depends entirely upon the composition of the Board of Directors and the way they felt about it. If you can imagine a local California Board saying that they thought it would be advantageous for us to move in there—I am ignoring for the moment any question of authority that we would have to do it —I don't think that that assurance would be binding as against such a condition.

Q. In other words, if the North American people reached the conclusion that the management of the applicant were incompetent and inefficient, and needed some substantial changes, you would not feel that the assurance which was given in 1930

(Testimony of Herbert C. Freeman.)

would restrict you from taking an active part to correct the situation that was then existing?

A. No, I didn't say that. I wasn't thinking of a condition under which they became incompetent. I was thinking [1672] of a condition, which is purely hypothetical, that they would in a sense invite us to come in and become more of a factor. Now, I can't imagine that that would happen.

(Discussion off the record.)

A. (continuing) What I really mean is this: That if the management became incompetent, I don't think we could cure it by trying to get into the situation ourselves. The most we could possibly do *would* to consult with the other directors there and get them to agree to putting in a management that was competent; and if we were unable to do that, I am quite sure that our interests would be better served by getting out of the situation rather than trying to move in, because I don't believe a foreign interest, as we would be, could advantageously operate a company of the character of the P. G. & E.

Q. Well, just what restrictions do you feel that the representation which you said was made in 1930 to the applicant's then management places you under?

A. I think there is a moral obligation there that as long as that Board feels that they have the situation in hand, and they don't want us to increase our interest, we should not do it.

(Testimony of Herbert C. Freeman.)

Q. So that you wouldn't go in in absence of an invitation by the local directors?

A. Well, or with the knowledge and agreement of the local directors. [1673]

Q. Mr. Freeman, you are acquainted, are you not, with the changes which took place in the relationships, some of the relationships between the North American Company and some companies in which it had a substantial investment, along in 1935, when it became quite certain that there would be a Public Utility Holding Company Act?

A. You have reference to the handling of——

Q. Transfer and——

A. —transfer work, yes, and financial representation—that kind of thing.

Q. That sort of thing?

A. Yes, prior to that we had acted as transfer agent and paying agent——

Q. Well, I don't care for a detailed description, but, I mean, are you familiar with the changes which took place with respect to the relationship between the North American Company and some of the companies in which it had a substantial investment? A. Yes.

Q. Along in 1935? A. Yes.

Q. Now, will you please describe all of the changes, if any, which took place during that period with respect to the relationship between the applicant and the North American Company? [1674]

A. There were no changes at all.

(Testimony of Herbert C. Freeman.)

Q. Would you say that the relationship which exists today between the applicant and the North American Company is the same as that which has existed at all times since 1930?

A. Yes, I would say it is exactly the same.

Q. Why did not the same changes occur with respect to your relationship with the applicant as took place with respect to such companies as the Detroit Edison, for example?

A. Well, Detroit Edison Company was a company with which we had had relations for 30 years prior to that time; and during that time, on a purely competitive basis, we had acted as its financial agent in New York; I mean, in the sense of paying coupons, transferring bonds, things of that kind—and we charged them a fee for it, a fee as fiscal agents.

The only reason we changed that was that we felt that under the Holding Company Act, there might be some impropriety in our continuing to act in that relationship. Now, that relationship had never existed with Pacific Gas. At the time we acquired our interest there, they already had all their arrangements made, and there was no occasion for them to make any changes.

Q. Well, do you mean that during 1935 there were no relationships which existed between the applicant and the [1675] North American Company which the North American Company felt needed changing, in view of the passage of the Act?

(Testimony of Herbert C. Freeman.)

A. Exactly, yes.

Miss Calkin: I think that is all.

The Examiner: Mr. Phleger.

Redirect Examination

By Mr. Phleger:

Q. Mr. Freeman, you have testified on direct examination that North American Company did not control or exercise a dominating influence over the business or affairs of the Pacific Gas and Electric Company. On cross-examination you were asked hypothetical questions as to the future, and some of your answers are perhaps susceptible of being read as expressing a view on your part that if the North American Company saw fit in the future, and considered it to its interests to do so, it might at some time in the future control the P. G. & E., or exercise the dominating influence over its management and affairs.

Was that your purpose in answering those questions—to convey that impression?

A. No, I hadn't intended to convey the idea that we had any intention or desire, or that we could assume any hypothetical condition in which we would; but the questions didn't relate to any desire on our part. They related, rather, to the extent, for example, to which we were under [1676] perhaps a legal obligation not to do it.

Q. Well, you must realize that you are being examined by able and skillful counsel, and the mat-

(Testimony of Herbert C. Freeman.)

ter to which I have reference is, rather, power than intent. Do you believe that at any time in the future the North American Company could, if it desired, if it decided it wanted to, go in and either control Pacific Gas and Electric Company or exercise the dominating influence over its management and affairs?

A. Well, we should first have to see what the Securities & Exchange Commission thought about it.

Q. Well, aside from that.

A. Aside from that, I can't imagine any condition under which the North American Company, as at present constituted, would feel that it would serve any useful purpose to try to control Pacific Gas.

Q. Let us assume it felt that it would be a useful purpose. Could it do it?

A. I don't know. I doubt whether it could.

Q. Well, just explain to me how you could do it, and how you would go about doing it. You have two directors out of fifteen, and you have two million shares out of ten million. Now, will you just lay out a course of conduct under which you would control that company?

A. Oh, I—perhaps I misunderstood the question. [1677]

Q. I think you did, and that is what I am just trying to point out to you. The question is: Assuming, now—you have always been explaining how you didn't think it was to your interest to do it, and you couldn't conceive any circumstances under

(Testimony of Herbert C. Freeman.)

which it would be to your advantage, and so forth; but I would like to ask you: Do you think that at any time in the future you could either control the company or exercise a dominating influence over its management and affairs if you wanted to?

A. Not as matters now stand, no. I think the drift of the questions was towards whether we would attempt to secure control.

Q. I realize that that was what you thought the drift of them was, but that wasn't what they did say, so that you may correct the impression your answers might have created. I ask you now whether, if you wanted to in the future, either control or dominate the affairs of the Pacific Gas and Electric Company, you thought you could.

A. The only way I could see that we could possibly do it would be by acquiring upwards of 50 percent of the stock.

Q. And to do that, you would have to get the permission of the S. E. C., would you not?

A. Yes.

Q. And you would have to go out in the market and buy [1678] up the stock?

A. That is true.

Q. And is that the only circumstance under which you think you could acquire control of the company? A. I believe it is, yes.

Mr. Phleger: That is all.

The Examiner: Miss Calkin, have you any further?

(Testimony of Herbert C. Freeman.)

Recross Examination

By Miss Calkin:

Q. Do you own over 50 percent of the voting securities of all of your subsidiaries which are considered subsidiaries under the Act?

A. All of which are considered—oh, which are considered subsidiaries under the Act?

Q. Yes, I mean, do you have——

A. Well, we have some statutory subsidiaries which we don't regard as subsidiaries.

Q. No. I mean, do you own 50 percent of the voting securities of Cleveland Electric, Wisconsin properties, Washington Railway & Light, Union Electric?

A. Of Cleveland, Union, and Wisconsin, we own over 50 percent, and North American Light & Power, and those are the ones we treat as subsidiaries.

Q. But, I mean——

A. In the case of Washington, we did, until quite [1679] recently, own over 50 percent of the voting control.

Q. But, I mean, under the Act, you admit control of certain companies. I mean, by admitting control there are no applications for exemption pending of companies in which you own less than 50 percent of voting securities?

A. Well, we have only two such situations which we directly own. One is Washington and the other is Detroit.

(Testimony of Herbert C. Freeman.)

Q. But the Washington property is an admitted subsidiary, in so far as the Securities & Exchange Commission is concerned, of the North American Company? A. Yes.

Q. Of course, Detroit Edison is not?

A. There we own—I think it is 47 or 48 percent of the voting control, and some 80 percent-odd of the common stock. We don't treat it as a subsidiary.

Q. On the books of your company?

A. However, we couldn't deny that at this time we do effectively control that company. But that control comes from an actual legal control, where we owned over 50 percent, which has recently been reduced.

Q. Well, in your opinion, is an ownership of a majority of the voting securities of a company necessary to effectively control it?

A. That depends on the ownership of the rest of the stock. In the case of Washington, for example, the fact that [1680] we don't own 50 percent of the voting control is due to the fact that the preferred stock is voting, and that there is more preferred stock outstanding than there is common. The preferred stockholder is generally unwilling to exercise control. It is hard to get preferred stock to vote, as a whole.

Q. Well, from your experience, you could easily conceive of a situation in which the owner of much

(Testimony of Herbert C. Freeman.)

less than 50 percent of the voting securities of a company could control that company if the remainder of the voting securities were widely scattered, could you not, Mr. Freeman?

A. Well, not only widely scattered, but, let us say, inarticulate. Now, you can't say, of a company like Pacific Gas, where so large a proportion of its stock is owned in California, that you have an inarticulate common stock list.

Q. But the more widely scattered your stock, the more inarticulate your stockholders are apt to be; isn't that true?

A. Not necessarily. It depends where it is scattered. If it is scattered purely on a basis of financial investment, they may be inarticulate as long as the company is showing good results, but where you have a company that is regarded as a local company, and the great bulk of the stock is owned locally, that is, a very large percentage of it is owned [1681] locally, you are going to get a very quick reaction from your stockholders, I think, if they think anybody on the outside is trying to dominate their company.

Q. In other words, in reference to the applicant, it is your opinion that it would be necessary for the north American Company to own in excess of 50 per cent of its voting securities before it could not only control the company, but exercise controlling influence over it?

A. Substantially yes. Of course you might argue that if we owned 49 percent, the chances of anybody's being able to gather together the whole 51 percent against us were none too good. I do mean that in that company probably more than in any other company you would seem to have practically legal control before you could do anything that appeared to favor the controlling interest as against the rest of the stockholders. I am sure you would get a very strong reaction.

Q. Well, you are aware of the fact, are you not, that only about 48 percent of the voting securities of the applicant are owned by residents of California?

A. I didn't know the exact percentage. I knew it was a very substantial percentage.

Miss Calkin: I think that is all.

Mr. Phleger: That is all.

The Examiner: You may be excused, Mr. Freeman. [1682] Thank you very much.

(Witness excused.)

(Discussion off the record.)

The Examiner: Let the record show that by agreement of counsel, or without objection by counsel for the applicant, the Commission is offering and there will be received in evidence as Commission's Exhibit No. 141, the—what is that, a financial statement?

Miss Calkin: No, it is a listing application.

Mr. Phleger: A listing application headed, "Pacific Gas and Electric Company, Committee on Stock List, New York Stock Exchange"—an additional listing of 1,825,000 common shares, the listing application being accepted June 4, 1930.

The Examiner: Adopted by the Governing Committee.

(The document referred to was received in evidence and marked Commission's Exhibit 141.)

The Examiner: Any further evidence to be offered now by the applicant?

Mr. Phleger: No, the applicant submits its application.

The Examiner: For the Commission?

Miss Calkin: The Commission rests.

The Examiner: I think the record shows that at an earlier point in the proceedings you made a motion which was, at my suggestion, deferred until later, although reference was made to it again. Do you still feel you want to propose that [1683] motion as to an intermediate report or findings?

Mr. Phleger: Yes.

It is our desire, and we apply for and move that there be an Examiner's report in this case. It may be as a result of the subsequent developments that that request will be withdrawn, but as of the moment, we make that request.

I would also like a stipulation, which I understand is agreeable to counsel for the Commission,

that the times limited by the rules with respect to request for findings, filings of brief, and all other acts, shall not apply in this proceeding, but that applicant and counsel for the Commission, subject to the approval of the Commission, shall hereafter agree as to such times.

Miss Calkin: It is so stipulated.

The Examiner: As I previously indicated, Mr. Phleger, according to the rules, I shall have to refer that motion to the Commission and I do not think it is necessary that you file that motion in writing because, as long as I have to submit it, I will submit it to the Commission in writing and await their instructions, and I presume that some matters with respect to that will be taken up with them, pursuant to this stipulation that you have just made, so I do not know how soon I will hear from the Commission, but I will await its instructions with respect to the report. [1684]

If there is nothing further at this time, the hearing is closed.

(Whereupon, at 4:10 o'clock p.m., January 16, 1941, hearing in this matter was closed.)

[1685]

[Endorsed]: No. 9918. United States Circuit Court of Appeals for the Ninth Circuit. Pacific Gas and Electric Company, a Corporation, Petitioner, vs. Securities and Exchange Commission, Respondent. Transcript of Record (in Six Volumes) (Vol-

ume I). Upon Petition to Review an Order of the Securities and Exchange Commission.

Filed October 24, 1941.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9918

PACIFIC GAS AND ELECTRIC COMPANY,
Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

POINTS UPON WHICH PETITIONER WILL RELY ON ITS PETITION FOR REVIEW HEREIN.

Petitioner herein hereby makes the following statement of points upon which it will rely upon its petition for review:

1. The Commission erred in failing to find that Petitioner is not controlled by The North American Company.

2. The Commission erred in failing to find that

the management and policies of Petitioner are not subject to a controlling influence by The North American Company.

3. The Commission erred in failing to find that the management and policies of Petitioner are not subject to a controlling influence by The North American Company so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that Petitioner be subject to the obligations, duties, and liabilities imposed in the Public Utility Holding Company Act of 1935 (herein called the Act) upon subsidiary companies of holding companies.

4. The Findings and Opinion of the Commission do not justify its failure and refusal to make the findings specified in the foregoing subdivisions 1, 2 and 3.

5. The Commission erred in failing to find affirmatively that Petitioner is an independent company; that it is not controleld by The North American Company; and that its management and policies are free from the controlling influence of The North American Company.

6. The Commission erred in taking jurisdiction over Petitioner without any finding of facts on which such assertion of jurisdiction is based, and it therefore acted without due process of law and in contravention of the Fifth Amendment of the Constitution of the United States.

7. The Commission erred in taking jurisdiction over assets of Petitioner located, and business and

affairs of Petitioner conducted, wholly within the State of California, in contravention of the Tenth Amendment of the Constitution of the United States.

8. The Commission erred in its interpretation and application of the Act, and in its conclusions, and the order is based upon a mistake of law and is arbitrary and void in the following respects:

(a) The Commission construed the Act as imposing upon Petitioner the duty of demonstrating that it is not controlled by The North American Company, and that its management and policies are not subject to the controlling influence, directly or indirectly, of The North American Company, so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that Petitioner be subject to the obligations, duties and liabilities imposed in the Act upon subsidiary companies of holding companies, and refused to consider or pass upon the evidence produced in said proceeding before the Commission in accordance with the provisions of the Act.

(b) The Commission ignored and failed to give weight and effect to uncontradicted evidence that Petitioner is not in fact controlled by The North American Company and that its management and policies are not subject to the controlling influence, directly or indirectly, of The North American Company so as to make it necessary or appropriate in the public interest or for the protection of investors

or consumers that Petitioner be subject to the obligations, duties and liabilities imposed in the Act upon subsidiary companies of holding companies, and refused to consider or pass upon the evidence produced in said proceeding before the Commission in accordance with the provisions of the Act.

(c) It disregarded the word "controlling" in construing and applying clause (iii) of Section 2(a)(8) of the Act.

(d) It construed and applied the words "subject to a controlling influence" in said clause as meaning "susceptibility to domination".

(e) It held that the ability "to make its influence felt in a substantial and affirmative manner" by The North American Company amounted to a controlling influence under the Act.

(f) It held that the fact that The North American Company might make a "formidable opponent" in a proxy fight, and that "there is a strong possibility that North American could prevail", (as found by the Commission, but which as hereinafter set forth is contrary to the uncontradicted evidence) thus making it a "potent tool in influencing the management to give heed to North American's wishes" amounted to a controlling influence within the meaning of the Act.

(g) It held in substance that a mere possibility of succeeding in a future proxy fight constituted a controlling influence within the meaning of the Act.

(h) It held that a future possibility of control

under speculative future circumstances constituted a controlling influence within the meaning of the Act.

(i) It decided that an intrastate public utility company may be found to be subject to a "controlling influence" by another company within the meaning of said Act, without proof that the influence presently exists or is sufficiently effective to be controlling.

(j) It construed and applied the Act as bringing an intrastate utility company within the regulatory provisions of the Act, as a subsidiary of a holding company, if it is hypothetically susceptible to future influence by the holding company, without proof that such influence is presently existing, or is strong enough, if exerted, to be controlling.

(k) It disregarded competent, relevant and material evidence which is uncontradicted and substantial and is adequate proof of the fact, that Petitioner is neither controlled by, nor subject to a controlling influence by, The North American Company so as to make it necessary or appropriate that it be regulated under the Act, and concluded that it may instead, deny the application by a series of conjectures unsupported by substantial evidence.

(l) The Commission construed and applied the Act as giving it uncontrolled discretion in determining whether it was necessary or appropriate in the public interest or for the protection of investors or consumers, that Petitioner be subject to the obligations, duties and liabilities imposed by the Act

upon subsidiary companies of holding companies; and disregarded conclusive proof not only that none of the evils enumerated in the Act existed in the past, or exist at present, but also that any power or influence of The North American Company is not sufficient to bring about any of such evils.

(m) The Commission failed to apply or give effect to the provisions of the Act that where it is shown that a controlling influence does not presently exist, but may come into existence at some future date, the application for an order declaring that Petitioner is not a subsidiary within the meaning of the Act, shall not be denied, but shall be granted conditionally on terms as authorized in Section 2(a)(8) of the Act.

(n) In holding that Petitioner "has not demonstrated that its management and affairs are not subject to the controlling influence of North American", the Commission held Petitioner to an impossible standard of proof of a negative fact and required such a degree of proof as produces absolute certainty.

(o) The Commission has construed the phrase "subject to a controlling influence" in clause (iii) of Section 2(a)(8) of the Act in such a manner as to render it so uncertain and vague as to be incapable of judicial enforcement.

(p) The Commission construed and applied the Act as giving it unlimited discretion in determining what degree of influence over Petitioner's management and policies shown to be possessed by North

American constitutes a "controlling influence" which is such "as to make it necessary or appropriate in the public interest, or for the protection of investors or consumers" that Petitioner be subject to the obligations, duties and liabilities imposed by the Act on subsidiary companies of holding companies. As so construed the Act is void for uncertainty and constitutes an unconstitutional delegation of legislative power. The proper construction of the Act is that any influence shown to be possessed by a holding company over the affairs of an intrastate public utility, must presently exist and must be sufficiently extensive and powerful to bring about the evils that the Act is designed to guard against and which are enumerated in it.

(q) The evidence shows conclusively that the evils which the Act was designed to prevent have not existed and do not at this time exist with respect to Petitioner, and that The North American Company never has possessed, and does not now possess sufficient influence to bring about such evils in the future, and the Trial Examiner so found. The Commission disregarded these findings, and the uncontradicted evidence which supports them, and erroneously concluded that Petitioner should be made subject to the obligations, duties and liabilities imposed by the Act on subsidiary companies of holding companies, because Petitioner "has not demonstrated that its management and policies are not subject to the controlling influence of North American so as to make it necessary or appropriate in

the public interest or for the protection of investors and consumers" that Petitioner be subject to the obligations, duties and liabilities imposed by the Act upon subsidiary companies of holding companies.

(r) The Commission construed the Act as providing that any company 10 percentum or more of the outstanding voting securities of which are directly or indirectly owned, controlled or held with power to vote, by a holding company, is a subsidiary company of such holding company; and that Petitioner under the Act was a subsidiary company of The North American Company merely by virtue of the ownership by The North American Company of more than 10 percentum of the outstanding voting securities of Petitioner.

(s) The Commission failed to construe the Act as requiring it to declare that Petitioner was not a subsidiary company of The North American Company upon a showing by it that it was not controlled, directly or indirectly by The North American Company, or that its management or policies were not subject to a controlling influence, directly or indirectly, by The North American Company; the Commission construed such Act as making it optional or discretionary with it to make such declaration.

(t) The Commission failed to interpret and apply the Act as required by Section 1 (c) thereof, which declares that the policy of said Act, in accordance with which policy all of its provisions shall be interpreted, is to meet the problems and eliminate

the evils enumerated in Section 1 of said Act connected with public utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce.

(u) The Commission construed the Act as permitting it to deny Petitioner an order declaring it not to be a subsidiary of The North American Company notwithstanding the evidence clearly showed that The North American Company did not possess any control, power or influence sufficient to bring about any of the problems or evils enumerated in Section 1 of said Act, or which the Act was designed to correct.

(v) The Commission construed the Act as requiring Petitioner to sustain the burden of demonstrating that its management and policies are not subject to the controlling influence of The North American Company in order to obtain its order declaring it not to be a subsidiary company of The North American Company; and in that connection weighed the presumption contained in Section 2(a)(8) of such Act (that, absent a showing to the contrary, any company 10 percentum or more of the outstanding voting securities of which are directly or indirectly owned, controlled or held with power to vote by such holding company, is a subsidiary company of such holding company) against probative evidence introduced by Petitioner; and failed to weigh all of the evidence presented, and to render its findings and order in accordance therewith.

(w) The Commission construed the Act as per-

mitting it to treat and give effect to the presumption contained in Section 2(a)(8) as evidence in the case, and to weigh the same against other probative evidence.

(x) The Commission construed and disposed of Petitioner's application for an order that it be declared not to be a subsidiary company of The North American Company, as an application for exemption from the provisions of the Act as a subsidiary company of The North American Company.

(y) The Commission construed the Act as presumptively requiring that Petitioner be regulated as a subsidiary of The North American Company.

(z) The Commission construed the Act as authorizing it to deny Petitioner's application for an order declaring it not to be a subsidiary of The North American Company unless Petitioner demonstrated that it was entitled to be exempted from the general requirements of regulation as a subsidiary of a registered holding company.

9. The Commission erred in finding without substantial evidence in support thereof, and contrary to substantial and uncontradicted evidence to the contrary, the following as facts:

(a) That "North American has the power—if the occasion arises and if it so desires—to make its influence felt in a substantial and affirmative manner".

(b) That "North American's holdings would make it a formidable opponent. And the mere fact that there is a strong possibility that North Amer-

ican could prevail would, in itself, be a potent tool in influencing the management to give heed to North American's wishes".

(c) That "it is wholly untrue to characterize North American's relationship to PG&E as merely that of a stockholder holding an investment interest".

(d) That "applicant regularly sends to North American a variety of detailed weekly and monthly reports".

(e) That "applicant has not sustained the burden of proving that it is not 'subject to the controlling influence' of North American within the meaning of Section 2(a)(8)."

(f) That "applicant has not demonstrated that its management and policies are not subject to the controlling influence of North American, so as to make it necessary or appropriate in the public interest, or for the protection of investors or consumers, that the applicant be subject to the obligations, duties and liabilities imposed by the Act upon subsidiary companies of holding companies."

(g) That the reason for The North American Company's non-interference with the management or policies of Petitioner has been "North American's complete satisfaction with the local management and that its failure to interfere has been purposeful."

(h) That "there is evidence to justify a finding that even at the present time North American exerts

a real influence in the affairs of PG&E, even though this influence is exerted in a negative way".

(i) That "so long as North American is satisfied with the present management, North American's voting power and the proxy machinery in the hands of the management make it virtually impossible for any other interest or group of interests to elect a majority of the directors".

By reason thereof the Commission acted arbitrarily and in violation of its statutory duty, and its order is void.

10. The Commission erred in failing to adopt the Report and Findings of Fact of the Trial Examiner recommending that Petitioner's application be granted.

11. The Commission, in making and entering the Order herein complained of, acted arbitrarily in that said Order is contrary to the evidence, which shows that Petitioner is not controlled by The North American Company and that its management and policies are not subject to a controlling influence by said company so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the Petitioner be subject to the obligations, duties and liabilities imposed by the Act upon subsidiary companies of holding companies, and said Order is without evidence to support it. By reason of the foregoing errors the Commission denied any hearing to Petitioner upon its said application in contravention of the Fifth Amendment of the Constitution of the United States.

12. If the Act is to be construed as it was construed and applied by the Commission as heretofore set forth, the Act would deprive Petitioner of its liberty and property without due process of law in contravention of the Fifth Amendment of the Constitution of the United States.

Dated: October 31, 1941.

HERMAN PHLEGER,
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Attorneys for Petitioner.

BROBECK, PHLEGER & HARRISON,
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[Endorsed]: Filed Nov. 1, 1941. Paul P. O'Brien, Clerk.

[Title of Circuit Court and Cause.]

DESIGNATION BY PETITIONER, PACIFIC GAS AND ELECTRIC COMPANY, OF THE PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN THE RECORD

Pacific Gas and Electric Company, Petitioner herein, designates the following as the portions of the record, proceedings and evidence to be contained in the record herein:

All of the transcript of the record certified by the Secretary of the Commission and filed in this Court on October 24, 1941, except that the following por-

tions of said record constituting duplications of material elsewhere appearing therein may be omitted in printing:

1. Commission's Exhibit No. 1—Notice of an order of the Commission for hearing dated September 4, 1940.

2. Commission's Exhibit No. 2—Order of the Commission changing the time and place of hearing and designating different trial examiner dated October 10, 1940.

3. Applicant's Exhibit No. 1—Application of Pacific Gas and Electric Company, et al.

4. Applicant's Exhibit No. 2—Amended and supplemental application of Pacific Gas and Electric Company, et al.

5. Trial Examiner's findings of fact and report.

6. Findings and opinion and order of the Commission.

Dated: San Francisco, California, October 31, 1941.

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[Endorsed]: Filed Nov. 1, 1941. Paul P. O'Brien, Clerk.